

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3
4 United States of America,)
5 Plaintiff,)
6 vs.) CR-19-01094-TUC-JGZ-JR
7 Isaias Delgado,)
8 Defendant.) Tucson, Arizona
9 August 12, 2021
8:53 a.m.

10
11 TRANSCRIPT OF JURY TRIAL - DAY FOUR
12 BEFORE THE HONORABLE JENNIFER G. ZIPPS
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

THE CLERK: In criminal matter 19-1094, United States of America versus Isaias Delgado, on for jury trial, day four.

Counsel, please state your appearances.

MS. WOOLRIDGE: Good morning, Your Honor. Angela Woolridge appearing on behalf of the United States.

THE COURT: Good morning.

MR. ROACH: Good morning, Your Honor. Brad Roach on behalf of Mr. Delgado, who is present. Trevor Hill has taken care of some other issues in another courtroom, so he will be here and I will waive his presence until he gets here, and I told him if the jury is here to try to come in as unobtrusively as possible.

THE COURT: All right. Thank you. Good morning.

THE DEFENDANT: Good morning.

THE COURT: All right. So I did receive the defendant's requested jury instruction. Ms. Woolridge, have you had an opportunity to review that?

MS. WOOLRIDGE: I have, Your Honor.

THE COURT: What's the government's position?

MS. WOOLRIDGE: The government objects to this instruction, Your Honor. This talks about essentially the elements or what are not elements to a different offense and are not -- first of all, they're not supported by case law. I think it's more of a comment on the evidence rather than

1 actual legal instruction. Certainly the defense can argue
2 what is not required, but those are not parts of the elements.

3 The Court will instruct the jury on the elements of this
4 particular charge and instruct them in accordance with the
5 case law and the model instruction. The defense can argue
6 that certain things are not illegal or certain omissions are
7 not illegal, and certainly the government is not trying to
8 pursue any charge based on the omissions that are listed in
9 the defense's proposed instruction. I think that at this
10 point, to instruct on things that are not crimes or that would
11 not be charged under different statutes would serve nothing
12 but to confuse the jury with regard to what the actual crime
13 is and what the elements of the actual crime are.

14 THE COURT: So it sounds as though you're speaking
15 with some familiarity about other regulations or laws. I'm
16 not sure what you're referring to or what the other
17 regulations are that would be at issue here. Could you point
18 out to me what in this list would be a problem or that might
19 be a violation of law.

20 MS. WOOLRIDGE: Your Honor, I don't believe that
21 there's anything in this list that would be a violation of
22 law, but really what it is referring to -- and there was some
23 conversation about what's referred to as a straw purchase or a
24 violation of 18 U.S.C. 922(a)(6), which is purchasing a
25 firearm on behalf of another person, and the defendant made

1 some comments about not being a straw buyer, things of that
2 nature. And so none of these things are required for that
3 offense either.

4 But, Your Honor, it appears to me that these are
5 omissions that were proffered and the defendant talked about
6 in his statements, about not getting bills of sale or whether
7 or not he got bills of sale, whether or not he checked
8 driver's licenses. I guess that would be another -- there
9 would be another possible violation for 922(d), any 922(d)(1)
10 through (9), if he sold, for instance, to a prohibited person.
11 And I don't know the statute off the top of my head for
12 transferring to an out-of-state resident, but that would be
13 possibly another violation, and those omissions would be
14 more applicable to whether or not that charge was committed.

15 But these omissions don't bear any weight into the charge
16 that was filed here. Certainly the government is not going to
17 argue that because the defendant didn't have bills of sale
18 that he committed an offense. Really, Your Honor, that goes
19 to the relevance of -- it really is more of just steps to
20 conceal what he knew was wrong with regard to willfulness.
21 But, Your Honor, certainly we're not alleging that that's any
22 sort of violation of the law, that he didn't keep bills of
23 sale or things of that nature. I think bringing in, you know,
24 the laws that govern private transfers of firearms are just
25 confusing and misleading to the jury.

1 THE COURT: All right. So going to your argument
2 about steps to conceal the wrongfulness of his actions by not
3 producing bills of sales, can you elaborate on that a little
4 bit more.

5 MS. WOOLRIDGE: Well, Your Honor, certainly if the
6 defendant was able to produce bills of sale showing that he
7 had, for instance, held on to these firearms for any length of
8 time before selling them, that certainly -- and as requested
9 by the agents during the interview and the fact that he said
10 he had, at one point said he didn't keep them and another
11 point said he had kept them but they got vacuumed up by the
12 car wash guy, first of all, I think that shows kind of an
13 evasiveness and an attempt to conceal his actions. I think it
14 goes to his credibility.

15 But then with regard to -- so as far -- but with regard
16 to steps to conceal his actions, by not documenting it, it
17 certainly, I think -- it's the government's position that the
18 defendant was selling these weapons very quickly after he
19 acquired them. By not having bills of sale that, for
20 instance, might reflect the exact same firearm sold in a very
21 short time period after it was obtained certainly could be
22 inferred to be concealing -- or not concealing but certainly
23 not -- you know, trying to make sure that there's no
24 documentary evidence of this crime.

25 THE COURT: All right. Thank you, Ms. Woolridge.

1 Mr. Roach.

2 MR. ROACH: Judge, my requested jury instruction was
3 in large part or basically exclusively part of the curative
4 instruction that I had asked the Court about, and specifically
5 the government had elicited testimony that my client had said
6 at one point or another he had obtained bills of sale. Okay.
7 So that's fine. And then he had done pictures, he had gotten
8 pictures or videos, things like that.

9 But when the government intentionally elicited from their
10 witness did he ever give you those things, no, see, that's
11 where you get into the problem of the burden-shifting and the
12 curative instruction. And so that's why that instruction is
13 necessary, to show that it's not required for him to do these
14 things, and it is not required for him or us to produce any
15 evidence to law enforcement about these things if he's a
16 private seller. So for that reason, I believe that all
17 those -- or that jury instruction is appropriate.

18 THE COURT: All right. So a curative instruction as
19 to the burden of proof, I'm not sure that this does that.

20 MR. ROACH: You know what, Judge? I was typing that
21 really fast because you had asked that they were in before end
22 of business. It could have been typed up as kind of three
23 separate jury instructions, I think, because the one that is
24 specific to, just specific to the curative instruction of the
25 government intentionally eliciting from their witness that my

1 client had not produced any evidence from them -- I think it's
2 the last one, and, Judge, I forgot to print out a copy, so I
3 don't have one in front of me. But where I specifically say a
4 private seller is not required to give any evidence, any bills
5 of sale, photographs, videos, or other records to the
6 government, that's a true statement and it's curative of the
7 government's what I argued was burden-shifting to my client to
8 prove that he's not guilty.

9 THE COURT: I guess I understood your argument to be
10 or the purpose of this instruction to be what type of
11 documentation a person who is not an FFL is required or not
12 required to have. That's how I read it.

13 MR. ROACH: Yes.

14 THE COURT: Because it doesn't talk at all about the
15 burden to produce something in the Fifth Amendment context.
16 It talks about regulations and regulatory requirements and
17 that essentially private citizens may not be required to
18 comply with the same regulations as FFLs -- well, not may not.
19 They are not required to comply with those same regulations.

20 So I took what you had written in your proposed
21 instruction to be a way to buttress that argument by informing
22 the jurors that it was correct what you were saying, that the
23 law does not require these types of things, as opposed to
24 addressing the burden-shifting issue.

25 MR. ROACH: And, Judge, yes, you said it better than

1 I did. Yes, I agree that everything that you're saying is
2 true. Purely statutory, none of those things is -- legally
3 it's true that none of those things are required for a private
4 person who is a private citizen not in the business of selling
5 firearms.

6 So, one, I believe it to be a correct statement of the
7 law so therefore not a statement on the evidence in this case
8 and therefore admissible by itself as a jury instruction, plus
9 I think it's especially important. It's not necessarily to
10 mention this to the jury about what I thought was a Fifth
11 Amendment burden-shifting, but I think that makes it even more
12 important that the jury gets that instruction.

13 So I think it is a correct statement of the law. It
14 would be accurate even if the jury instruction -- or I'm
15 sorry. Even if my allegation of burden-shifting had not
16 occurred, I think it would still be appropriate plus its added
17 importance because of that.

18 THE COURT: So the argument here and what the jury
19 has to decide is basically whether or not Mr. Delgado should
20 have been licensed to do what he was doing, and I'm not sure
21 that my instructing the jurors as to this information here
22 goes to that issue. It certainly goes to some other issues,
23 what the jurors might infer from Mr. Delgado's statements to
24 agents during their interviews. I believe it was Mr. Delgado
25 who was the one to reference bills of sales and recordings,

1 evidence that he had of the sales, and I believe there was
2 some testimony too that some of those items were not required.

3 I'll think about it a little longer. I do believe that
4 it would be appropriate for argument. I'm not sure that I
5 need to include it in the jury instructions, so that it
6 wouldn't confuse the issues as opposed to allow the jurors to
7 focus on really the one issue they have to decide, which was
8 whether or not Mr. Delgado is in the business of dealing in
9 firearms and willfully doing so. So I'll contemplate that a
10 little further.

11 I do have proposed instructions that I worked on
12 yesterday that I'll pass out to counsel.

13 As far as the testimony this morning, Mr. Roach, do you
14 have more witnesses?

15 MR. ROACH: Judge, I'm going to move to admit 201
16 into evidence, I guess in front of the jury or now. Other
17 than that, my client, after consultation with me, has informed
18 me he is not going to testify, so we will have no further
19 witnesses.

20 THE COURT: All right. And so, Mr. Delgado, let me
21 just confirm with you, you know that you do have a right to
22 testify?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: All right. And you talked with your
25 attorney about whether or not you wanted to exercise that

1 right or not?

2 THE DEFENDANT: Yes, I did.

3 THE COURT: All right. And you've decided that you
4 don't want to testify here?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. And so, of course, you're not
7 required to testify either, and we'll be informing the jurors
8 then that they can't hold your silence against you. That's
9 how you want to proceed?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Thank you very much.

12 THE DEFENDANT: Thank you.

13 THE COURT: All right. Does the government have any
14 rebuttal or does the government intend to produce any evidence
15 or testimony in rebuttal?

16 MS. WOOLRIDGE: No, Your Honor.

17 THE COURT: All right. So maybe we need to take a
18 minute here then to go through the jury instructions.

19 So I will take out Instruction 3.4, the defendant's
20 decision to testify. And on 3.3, I'm going to take out from
21 the heading the "if applicable."

22 Selina, would you mind letting the jurors know that we
23 have a legal issue we have to resolve and that it's probably
24 going to be ten, 15 more minutes.

25 THE CLERK: No problem.

1 THE COURT: Thank you.

2 So, counsel, as I stated yesterday, these final
3 instructions are essentially what the parties had agreed as
4 stipulated, with the exception of the one sentence in
5 Instruction 8.53 which we discussed yesterday.

6 4.8 was one that the parties proposed if applicable, and
7 I don't know that it's applicable, so I would propose removing
8 4.8. That's on page 15. Any objection to that?

9 MS. WOOLRIDGE: No, Your Honor.

10 MR. ROACH: No objection.

11 THE COURT: Ms. Woolridge, is it a correct statement
12 of the law that the law does not require a private seller of
13 firearms to produce documentation of sales?

14 MS. WOOLRIDGE: Your Honor, I can't think of any law
15 that that would misstate. I believe that, at least according,
16 at least based on my knowledge, I can't think of any law that
17 would prevent -- that would require it, so I do think it's a
18 correct statement of law.

19 THE COURT: All right. I would propose adding that
20 statement to support the request for an instruction as to the
21 burden-shifting and burden of proof, and I could put that
22 after 3.2, which is on page 3, that talks about the
23 presumption of innocence; or I could put that after the
24 description of the charge, which I would propose would be
25 after, on page 13, after 3.18.

1 What's your preference, Mr. Roach?

2 MR. ROACH: Judge, I would prefer it after 8.53.

3 THE COURT: All right. So I won't put it after 8.5,
4 but I'll put it after the next page which refers to 8.53. So
5 after the 3.18 description or instruction on page 13, we'll do
6 a new instruction that says: The law does not require a
7 private seller of firearms to produce documentation of sales.

8 Ms. Woolridge, any objections to the proposed
9 instructions with those modifications?

10 MS. WOOLRIDGE: Reserving my objection to the request
11 by the defense that the Court is adding to, following 8.53, no
12 objection with those modifications.

13 THE COURT: All right. Mr. Roach.

14 MR. ROACH: No objection, noting previous arguments
15 concerning jury instructions.

16 THE COURT: I'm sorry. I don't know what you're
17 referring to with your objection.

18 MR. ROACH: Sure. So, Judge, I had requested jury
19 Instruction 8.53, to remove the second-to-the-last sentence.
20 The Court's already ruled on that.

21 THE COURT: And that's the one that had to do with
22 the proof of a sale.

23 MR. ROACH: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. ROACH: And then I had asked for a more extensive

1 jury instruction, and the Court has ruled that you would like
2 to boil it down to one sentence, so I'm just reserving those
3 objections. I have no other objections.

4 THE COURT: All right. So that we have a record of
5 your requested instruction, the one that I asked you to email
6 last night, I will order that the clerk file a copy of your
7 proposed instruction for the record.

8 MR. ROACH: Thank you, Your Honor.

9 THE COURT: All right. Then we'll have a verdict
10 form prepared.

11 And, counsel, any other issues?

12 MS. WOOLRIDGE: No, Your Honor.

13 MR. ROACH: No, Your Honor.

14 THE COURT: Mr. Roach, you had reserved a motion.

15 MR. ROACH: Yes, Judge. I would just move for a
16 motion for summary judgment or -- and I forget the number in
17 federal court -- arguing that the government has failed to
18 prove that the defendant has engaged in the crime charged and
19 that the Judge or the Court should enter a directed verdict
20 against the government and enter a not guilty finding on
21 behalf of my client -- or, I'm sorry, and dismiss the
22 indictment on behalf of my client.

23 THE COURT: As to which element do you believe the
24 government hasn't met their burden?

25 MR. ROACH: All of them, Your Honor.

1 THE COURT: Ms. Woolridge.

2 MS. WOOLRIDGE: Your Honor, the two elements of the
3 charge of engaging in the business of dealing firearms without
4 a license have been met by the government in this case. I'm
5 sorry. I should say proof of both elements. Of course, the
6 easier of the two elements I'll address first, that the
7 defendant did not have a license to deal in firearms within
8 the date alleged was undisputed in this case.

9 Second, that he engaged in the business of dealing in
10 firearms, Your Honor, the government has provided proof of
11 repetitive firearm purchases and proof of the intent to make a
12 profit from the sale of these purchases through the fact that
13 the defendant did sell all of these firearms, through his
14 financial information that reflects the sale of these firearms
15 and, quite frankly, mirrors the sale of these firearms; his
16 statements that he was making, just by example, from one
17 firearm sale alone, \$2,000 off of the sale of a firearm; the
18 fact that the defendant took steps to cover his firearms
19 dealing, such as the cases found in the storage facility with
20 the serial numbers removed.

21 Your Honor, all of those, all of that evidence, just to
22 name a few examples, is evidence of his intent and his
23 willfulness in this particular case. And certainly the time
24 and attention and effort that was given to these measures by
25 ordering and buying the firearms, physically going to the

1 stores to pick them up, purchasing them, storing them, posting
2 ads, contacting buyers, negotiating prices, and finally
3 meeting with the buyers and transferring the firearms, all of
4 that meets the element or the definition of dealing, as far as
5 time, attention, and effort.

6 But I think most telling is the repetitive nature of
7 these purchases, especially when looking at the dates, the
8 short time frame, and the fact that a short time later the
9 defendant did not have any but two of these 40 firearms that
10 we spoke of. And even discounting those, the ten firearms
11 that were seized and the two that he did have, that's 28
12 firearms he purchased that the government knows of through
13 documentation and he did not have a short time later.

14 THE COURT: All right. Thank you, Ms. Woolridge.

15 The Court has to view the evidence that's been presented
16 in the light most favorable to the government to determine
17 whether or not it's sufficient to sustain a conviction, and
18 the Court does conclude that a rational trier of fact could
19 have found the essential elements of the crime beyond a
20 reasonable doubt based on the evidence that's been presented
21 and reasonable inferences from that evidence. So I will deny
22 the motion for a directed verdict.

23 Counsel, are we ready for the jurors to be brought in?

24 MS. WOOLRIDGE: Yes, Your Honor.

25 MR. ROACH: Yes, Your Honor. Do you read the

1 instructions before or after argument?

2 THE COURT: I was going to read them after your
3 argument.

4 MR. ROACH: Okay. And I just -- it would be okay if
5 I read from the proposed that we talked to, just certain
6 issues?

7 THE COURT: Yes, if they're in the ones that we're
8 going to go forward.

9 MR. ROACH: Yes.

10 THE COURT: And you may show them too if they are
11 part of the instructions that we've just discussed that we're
12 going to provide.

13 MR. ROACH: Thank you, Your Honor.

14 Your Honor, I'm sorry. Did you want me to wait to move
15 to admit 201 in front of the jury --

16 THE COURT: Please.

17 MR. ROACH: -- and then rest? Thank you.

18 THE COURT: Right.

19 And you know, counsel, I'm sorry. I'm looking at the
20 statement of law that I had proposed adding, "The law does not
21 require a private seller of a firearm to produce documentation
22 of sales." I suppose that is fine. I have some concerns
23 about giving the instruction, but --

24 MS. WOOLRIDGE: And, Your Honor, for the government,
25 I can't say what the Court's concerns are, but of course again

1 we have concerns about, again, whether it is appropriate in
2 light of the actual law regarding, governing the offense
3 that's charged here.

4 Also, if I may, with regard to the defense introduction
5 of Exhibit 201 -- I'm sorry. I believe it's 201.

6 MR. ROACH: Yes.

7 MS. WOOLRIDGE: The defense and the government do
8 have an agreement that it is being introduced with the
9 informing of the jury that the amount of tax owed, according
10 to the return that was filed, as of this date has not been
11 paid and has accrued interest and penalties.

12 THE COURT: So do you intend to inform the jurors of
13 that stipulation during the rebuttal, or is Mr. Roach going to
14 inform the jurors of that stipulation?

15 MS. WOOLRIDGE: Mr. -- well, it doesn't -- I would
16 prefer to make that, so I can say that. Basically, the
17 defense can offer the exhibit and rest, and I can just offer
18 the stipulation to the jury in rebuttal and then rest.

19 THE COURT: All right.

20 MR. ROACH: And I have no objection to it, and the
21 stipulation will be: The parties agree that the taxes owed
22 pursuant to the 2019 tax returns have not been paid as of this
23 date.

24 MS. WOOLRIDGE: And have accrued interest and
25 penalties.

1 MR. ROACH: Yes.

2 THE COURT: Okay. Thank you.

3 (Jury in, 9:25 a.m.)

4 THE CLERK: In criminal matter 19-1094, United States
5 of America versus Isaias Delgado, on for jury trial, day four.

6 Counsel, please state your appearances.

7 MS. WOOLRIDGE: Good morning, Your Honor. Angela
8 Woolridge appearing on behalf of the United States.

9 THE COURT: Good morning.

10 MR. ROACH: And good morning, Your Honor. Brad
11 Roach, Trevor Hill on behalf of Mr. Delgado for the defense.

12 THE COURT: Thank you. Good morning.

13 THE DEFENDANT: Good morning.

14 THE COURT: And good morning to the jury.

15 All right. Counsel, are we ready to proceed?

16 MS. WOOLRIDGE: We are, Your Honor.

17 MR. ROACH: Yes, Your Honor.

18 THE COURT: All right. Mr. Roach.

19 MR. ROACH: Your Honor, the defense would move to
20 admit Exhibit 201 into evidence.

21 THE COURT: All right. And I understand there is a
22 stipulation to the admission of that exhibit.

23 MR. ROACH: Yes, Your Honor.

24 THE COURT: All right. I will order that Exhibit 201
25 be admitted.

1 MR. ROACH: And with that, Your Honor, the defense
2 rests.

3 THE COURT: Thank you.

4 Ms. Woolridge, any rebuttal?

5 MS. WOOLRIDGE: Yes, Your Honor, briefly. If I
6 may approach.

7 THE COURT: You may.

8 MS. WOOLRIDGE: Ladies and gentlemen of the jury, the
9 parties have stipulated and you may accept this stipulation of
10 fact as regards to Exhibit 201, which has just been admitted
11 by the defense. That is a copy of the defendant's 2019 tax
12 return. The parties agree that it is a correct statement of
13 fact that, as of today's date, the amount of tax reflected in
14 that return is still owed by the defendant and pending as a
15 debt to the IRS along with accrued interest and penalties.

16 THE COURT: All right. And so the parties have
17 agreed to certain facts that have been stated to you. Those
18 facts have now been conclusively established.

19 Anything further?

20 MS. WOOLRIDGE: And with that, the government rests,
21 Your Honor.

22 THE COURT: All right. Thank you.

23 So at this time, we will hear closing arguments.

24 Ms. Woolridge.

25 MS. WOOLRIDGE: Thank you, Your Honor. May

1 I approach?

2 THE COURT: You may.

3 MS. WOOLRIDGE: May it please the Court, counsel.

4 Ladies and gentlemen of the jury, good morning. This
5 case is simple. The defendant, Isaias Delgado, bought guns, a
6 lot of guns, with the intent to sell them and make money, and
7 all of this would have been just fine if he had just simply
8 got a license, but he didn't. That's it. That's all this
9 case is about. That's all that matters here, not how many
10 guns he sold or how much money he made selling his guns or how
11 much money he made in his regular job. So don't let all of
12 that distract you.

13 As the Judge will instruct you in just a moment, after
14 the lawyers finally stop talking and sit down, all that's
15 required to commit the crime, the crime that we submit to you
16 the defendant, Isaias Delgado, did commit, is contained in
17 this instruction, and there's two elements and they're
18 straightforward.

19 If I may. Thank you, Selina.

20 THE CLERK: You're welcome.

21 MS. WOOLRIDGE: These are the elements of engaging in
22 the business of dealing firearms without a license:

23 First, that the defendant was willfully engaged in the
24 business of dealing firearms from on or about December 17th,
25 2018 to on or about April 4th, 2019; and, second, that he

1 didn't have a license for a firearms dealer.

2 Well, ladies and gentlemen, we can get rid of that second
3 element very easily. It's undisputed that the defendant did
4 not have a license to deal firearms. We heard undisputed
5 testimony from an industry operations inspector to that
6 regard. The defendant himself stated as much to the agents,
7 that he was not licensed as a firearms dealer. So that one's
8 easy. But, ladies and gentlemen, I submit to you, so is the
9 first element, that the defendant was engaged in the business
10 of dealing firearms within those dates.

11 So what does it mean to be engaged in the business of
12 dealing firearms? Well, we must prove to you -- and I will
13 submit to you the government does have the burden of proof,
14 and I'll talk to you in a little bit about what that burden of
15 proof means. But the government must prove beyond a
16 reasonable doubt that the defendant engaged in a greater
17 activity than the occasional sale of a hobbyist or collector
18 and that he devoted time, attention, and labor to selling
19 firearms as a trade or business with the intent of making
20 profits through reasonable sales of firearms -- repeated
21 purchases and sales of firearms.

22 Ladies and gentlemen, we've proved all that to you. This
23 was not the occasional sale of a hobbyist or a collector.
24 This was repetitive multiple firearm purchases of the exact
25 same make and model on multiple dates over a period of time.

1 There is nothing occasional about the defendant's conduct, so
2 we can get rid of that right there.

3 Did he devote time, attention, and labor to selling
4 firearms? Well, yes, he did. What are all the things that he
5 did? He ordered the firearms. He bought the firearms both
6 online and physically in licensed firearm dealers. He
7 physically went to the stores to pick up those firearms,
8 completed the Form 4473, provided cash or, online, provided
9 his credit card or debit card, made those payments. He
10 purchased them. He took physical possession of them.

11 He stored them. We know at least some of them he
12 actually rented a storage facility to store all these
13 firearms. He posted ads online. He contacted buyers,
14 negotiated prices. Then he had to meet with those buyers to
15 take the money and transfer the firearms that he sold to them.
16 That took time and attention and effort, and he did that again
17 and again with regard to every single one of these firearms he
18 bought and sold.

19 So, ladies and gentlemen, I'll submit to you that the
20 government did prove that the defendant devoted time,
21 attention, and labor to selling firearms. There's no question
22 he bought firearms. There's no question he sold firearms.
23 There's no question that took some doing on his behalf.

24 So what was his intent? Making profits through the
25 repeated purchase and sale of firearms. These were not

1 firearms he intended to keep. We heard how nonsensical it
2 would be to buy so many multiple of the same exact firearms,
3 firearms that he no longer has within weeks or sometimes days
4 later. And we heard that he sold these firearms. He talked
5 about having sold those firearms. He talked about making a
6 profit. We heard his statements about how in just one firearm
7 sale alone, he made \$2,000 because he was getting higher and
8 higher and higher offers. He bought it for 8,500, first offer
9 was 9,500, and eventually sold it for 10,500. And lo and
10 behold, look at his bank account. He's got a deposit in that
11 exact same amount to prove it.

12 This is not an occasional sale of someone who just likes
13 to buy firearms as a hobby or collection. Now it's very
14 possible the defendant might like firearms. There's nothing
15 wrong with that. There's nothing wrong with liking firearms
16 at all. There's nothing wrong with buying firearms for your
17 personal collection. There's nothing wrong with occasionally
18 selling off, you know, some of these firearms, but not for the
19 purpose, not repeatedly for the purpose of making profits, and
20 that's what the defendant did here, 40 firearms, ladies and
21 gentlemen, 39 over the course of ten months.

22 Even just focusing on the dates of the indictment, there
23 were 15 guns he bought and sold just within that about
24 two-and-a-half-month time period. And those are all the
25 ones -- just the ones we know about. As you heard about, as

1 you heard, there's very likely other guns as well. We heard
2 about Armslist postings for guns that weren't included in the
3 known purchases by the defendant. We heard about statements
4 he made about guns in addition to those known purchases. So
5 there is very likely more guns than we knew about, but just
6 even the ones we knew about, so repetitive, again and again,
7 over the course of a very short period of time.

8 Again, maybe the defendant does like guns. Maybe he
9 likes to go shooting. But it's interesting. We heard from
10 the president of the Tucson Rifle Club that the defendant went
11 there once, not six times like he told Agent Bort, but once.
12 He never went to the .50 caliber range like he told Agent
13 Bort. In fact, he never -- you have to be a member to use
14 that range, and he became a member but never even signed into
15 that range.

16 And he went there once, one time. The video is the same
17 date as the date that we heard of the one time he did go to
18 the Tucson Rifle Club. And the gun he shot was one he bought
19 just the previous day, a gun that he took out of a brand-new
20 box that still had the stickers on because, of course, he
21 didn't intend to keep it. He intended to sell it. And lo and
22 behold, he did sell it. He didn't have it anymore less than
23 two months later.

24 Now, ladies and gentlemen, maybe the defendant started
25 his firearms sales without the intent to engage in a

1 repetitive business. Maybe he was in the beginning just a
2 firearm aficionado that liked guns. Again, there's nothing
3 wrong with that. But we know that the defendant was
4 purchasing guns as early as 2017, and he was selling guns as
5 early as 2017. We heard about that's when he was selling guns
6 on Armslist. We heard about some of those communications of
7 him being on Armslist and buying and selling guns there as
8 early as 2017, and that's reflected in the exhibit that you
9 have of the Armslist information.

10 Now maybe then it was just occasional. It certainly
11 wasn't the volume that we saw in late 2018 to early 2019. But
12 at some point, he realizes he can make money. He can make a
13 lot of money, as we talked about, \$2,000 off the sale of one
14 gun.

15 So this may have started off legally enough, but at some
16 point it switched. It switched from being someone who just
17 likes guns as a hobby, likes guns for shooting or collecting,
18 to someone who likes guns for making a profit. And, ladies
19 and gentlemen, that's what makes the conduct illegal.

20 Now the government isn't required to prove, as the
21 instruction will tell you, that the defendant actually made a
22 sale of firearms. What is important is his intent. Now I
23 submit to you we have proved sales. We've proved several
24 sales and sales that happened at a significant profit for the
25 defendant, but the question is and the issue is what his

1 intent is. Well, ladies and gentlemen, I submit to you that
2 the evidence leaves no question that his intent was in fact
3 making profits. So I submit to you that the government has
4 proven that his activity met this definition of engaged in the
5 business of dealing in firearms without a license.

6 Now let's look a little bit closer at that activity, and
7 I think that one of the most helpful exhibits in this case is
8 Exhibit 77, the purchase chart. Now, like we said, 2017,
9 there's one, we have one purchase reflected here. We know
10 there are more from his Armslist account where he's online,
11 negotiating the purchase and sale of firearms, but only one
12 that we were able to document with forms from the licensed
13 firearms dealer.

14 Okay. Maybe back in 2017 it wasn't as repetitive, it
15 wasn't as often, but then we get into May of 2018, and that's
16 when his firearm purchases, repetitive firearm purchases start
17 in earnest. That is what reveals his true intent here, which
18 is buying with the intent to sell for profit.

19 We look at May 25th of 2018. That's when he buys the
20 first known Savage Arms Model 93. We know he no longer has
21 this gun. We know at some point he sold it. And we know soon
22 after that purchase he opens up a bank account, a bank account
23 which I'll talk about later, but that essentially was a
24 clearinghouse for his money that he spent buying and selling
25 firearms. That's where he deposited his cash. It was a

1 credit card and debit card he used for online purchases, and
2 you will see, as we'll talk about in a minute, how closely his
3 cash deposits reflected his firearm purchases during the same
4 time frames and in fact just exceeded them, showing the
5 profits that he was making.

6 So he buys one Savage Arms on May 25th, 2018. At some
7 point, he decides to sell it. We don't know exactly when.
8 This one wasn't recovered. We have no record of when it was
9 sold, but we know it was sold at some point before April of
10 the following year, so before April 4th, basically within
11 those ten months.

12 But what does he do? Whether he initially bought this
13 first Savage Arms with the intent to keep it or sell it, six
14 days later he buys two more, two more of the exact same
15 firearm. Again, there would be no reason to do this as part
16 of a collection, to just get identical firearms. It makes no
17 sense. And again we know he sold these because he no longer
18 had them ten months later. And then what does he do? Less
19 than two months later, he buys a fourth of this same identical
20 firearm, a fourth firearm that he again no longer has now,
21 only eight months after the purchase, on July 27th, 2018. So
22 that's the first instance of repetitive purchases that
23 evidences his intent to sell for a profit.

24 Then we look at October 12th. October 12th, the
25 defendant buys two again identical Romarm rifles, Romarm

1 WASR-10 rifles, which are, we heard about, basically an AK-47
2 type rifle, two identical firearms. We know he sold them both
3 because he no longer had either of them, but also we know that
4 he sold No. 6 because it's recovered out of state, outside of
5 the state of Arizona, just months later. So we know that
6 those were sold as well.

7 But what's more, we know that approximately two months
8 after buying the first two Romarms, on December 20th, as
9 reflected in Item 14, he buys another identical rifle,
10 identical Romarm WASR-10 AK-47 type rifle, on December 20th,
11 again a firearm that he doesn't have now, just three and a
12 half months later. So again, here we have these repetitive
13 purchases and repetitive sales for the intent to make -- and
14 we know that he intended to make a profit.

15 But there's more. We've got three identical Smith &
16 Wesson pistols that were bought on December 17th, 2018, again
17 exactly -- and I'm sorry, two identical, the 9 millimeters as
18 well as the .40 caliber, but again three Smith & Wesson
19 pistols. None of these are the two pistols that the defendant
20 had in his garage. These are separate. Again, he doesn't
21 have any of them two and a half months later.

22 Where we really get into some interesting repetitive
23 purchases for the intent of the profits, though, are the
24 Barrett .50 caliber rifles, and this isn't just because
25 they're huge weapons and high-caliber, but we look at the

1 amount, we look at the profit that are made on them, and we
2 look at how repetitive these purchases were. There was a
3 total of six of them, each of them purchased between 6,800 and
4 \$8,500. But, as I'll get to in a minute, we'll see that the
5 defendant made a profit off of every single one of these.

6 So he orders the first one that we know about on February
7 11th, and he has to put it on layaway. Now keep that in mind,
8 ladies and gentlemen. The defendant wants you to believe that
9 he has so much money that he's able to spend all of this
10 money, of his own money, on firearms, these repeated
11 high-volume firearms, high-dollar firearms, but he has to put
12 this \$8,000 weapon, the first really big purchase he makes.

13 Now, granted, all these other previous purchases, they're
14 not cheap. We're going, you know, upwards of \$700. These are
15 all -- these certainly aren't cheap weapons. But then when he
16 starts getting into the real high-dollar weapons, several
17 thousand dollars, he has to put it on layaway. And that's
18 fine, but he picks it up on February 19th and the very next
19 day lists it for sale and in his ad claims, oh, I found
20 something else I'm interested in.

21 Well, the defendant found something else he was
22 interested in. We already know that for quite some time he's
23 been making repetitive purchases. If this was true, that it
24 just had to do with what he's interested in and he has so much
25 money that he can spend it on firearms at will, he wouldn't

1 have needed to sell this Barrett to buy another firearm he was
2 interested in. I submit to you he sold it because he knew he
3 could make a profit.

4 So that Armslist ad, I think, ladies and gentlemen, that
5 shows this Barrett for sale just one day after he finished
6 paying it off. He wants it so much that he puts it on layaway
7 and takes a week to pay it off but then turns around and sells
8 it the very next day. We know he didn't take it shooting, but
9 he just decides he doesn't want it. It makes no sense, ladies
10 and gentlemen, unless he bought it for the sole purpose of
11 selling it, and so he sells it.

12 We hear about how he took a Barrett he bought for
13 \$8,500 -- well, let's look at this one. With tax, exactly
14 \$8,500. He posts it online and starts getting offers, and the
15 offers get bigger and bigger and bigger. First offer, \$9,500.
16 Wow, I can sell this one gun for a \$1,000 profit? Oh, wait,
17 the offers keep getting higher, and he sells it for \$10,500.

18 Look at his bank records from Vantage West for that very
19 next month, and you'll see that, lo and behold, the defendant
20 did in fact have a cash deposit for exactly \$10,500 that next
21 month, in March of 2019. There is no business income that
22 corresponds with this deposit. There's nothing except selling
23 that firearm, which the defendant admitted to selling,
24 admitted to selling at that price, and realizes very quickly
25 that he can make really good money off of selling these

1 firearms.

2 And he doesn't stop there. On the 19th of February, the
3 same day he picks up that Barrett, he picks up another 9
4 millimeter. Now that's one that he still has. And in fact,
5 as you'll look, that's the lowest dollar weapon here. That
6 weapon was under \$200. He has -- I'm not saying that that's
7 cheap. Certainly \$184 can be considered a good deal of money,
8 but it's interesting that the one firearm he has is the lowest
9 dollar firearm. All the others, these high-dollar firearms,
10 he can make money off of.

11 He then buys a Beowulf barrel. Now we do see him posting
12 a Beowulf barrel for sale two weeks later. Whether or not
13 that's the same barrel, hard to say. The color seems somewhat
14 different. So again that could be a repetitive purchase, but
15 certainly it's something that he's looking to sell.

16 Then on February 24th, we see the first Anderson AM-15
17 multi-caliber receiver that the defendant orders, two of them
18 as a matter of fact, and we'll see more of them later, but
19 again same identical weapons on February 24th. And both of
20 these are, with the transfer fee, approximately \$1,000.
21 Again, we're talking about high value, high values here.

22 But going back to the Barretts --

23 THE COURT: Ms. Woolridge.

24 MS. WOOLRIDGE: Yes.

25 THE COURT: If you could move it down just a little

1 bit. It was cut off.

2 MS. WOOLRIDGE: I apologize.

3 THE COURT: Thank you.

4 MS. WOOLRIDGE: Thank you.

5 Moving back to the Barretts, we know that the defendant,
6 in late February, sold a Barrett for a \$2,000 profit. Then on
7 March 7th, he orders the exact same firearm, exact same type
8 of firearm, finds a bit of a better deal. Instead of 8,000,
9 he pays \$6,800, although there are some fees associated with
10 it as well. But this time he doesn't have to put it on
11 layaway because he has all that money in the bank from his
12 previous firearm sales, so he's able to pick it up when it's
13 transferred to the local FFL on March 13th.

14 On the same date he orders the Barrett from a different
15 online FFL, he orders an FN M249. Now we heard about the FN
16 249s. That's the one the defendant claims is subject to
17 recall.

18 Now that's an interesting topic I'm going to just take a
19 moment to discuss. As we heard, and this is the firearm he
20 paid even more for than the Barrett he bought on the same day,
21 almost \$8,000, 7,650 plus some fees. It's quite a bit of
22 money. He says he got rid of it because, he sold it at a
23 profit because it was jamming and it was subject to recall.

24 Well, first of all, as we heard, this particular firearm
25 wasn't subject to recall. The agent ran the serial number --

1 it was easy to do on the website -- found out that it wasn't
2 subject to the recall. In fact, this happened at -- this was
3 a 2019 firearm. The recall was back in 2017. But he sells
4 it. He sells it at a profit. I believe he said he made about
5 9,000. He was able to sell it for about 9,500, but he
6 definitely said he made a profit off of it.

7 On the same day he picks up the FN, he also picks up a
8 Diamondback 5.56 millimeter rifle. We'll talk about the
9 Diamondback in just a minute. This is the first of two we see
10 him purchase. Again, keep in mind he doesn't have any of
11 these firearms except for the Smith & Wesson we just talked
12 about, Item 17. So far he doesn't have any other of these
13 firearms we're talking about.

14 He buys another Beretta -- we've already heard about
15 three Beretta pistols he bought, two of them 9 millimeter --
16 buys a third Beretta 9 millimeter on March 15th. March 15th,
17 the same day, he picks up that first FN belt-fed and a
18 Diamondback rifle and also on the 15th picks up his fourth
19 Beretta.

20 But the day before he had also ordered, on March 14th,
21 two more Barrett .50 caliber rifles. Now that's significant
22 because if we look at it, if we go back, the defendant picked
23 up his second Barrett on March 13th. Then one day later he
24 orders two more, again exact same make and model, a .50
25 caliber BMG rifle, Model M82A1. We know he sells these both

1 not only because he doesn't have them, but again just a few
2 months later one of them is recovered outside of the state of
3 Arizona.

4 And let's look at the dates here. Not only does he buy
5 what is now that we know about his third and fourth Barretts,
6 he orders them online one day after he picks up his second.
7 He takes the possession of them at the local FFL, N&N, on
8 March 20th.

9 So what do we know about March 20th? That very same day,
10 he orders two more Barretts, two more identical Barretts. In
11 fact, these four Barretts, the two that were picked up on
12 March 20th and the two more that were ordered March 20th, are
13 not only identical in make and model, they have sequential,
14 all four serial numbers are sequential. They were made at the
15 same time. They were stamped one right after another.

16 Now he never gets to take possession of these Barretts
17 because they were intercepted when he met with ATF, but I
18 submit to you that just like the previous four Barretts that
19 he bought and sold, he intended to sell these as well. Again,
20 why would you? Why would you buy these firearms when you just
21 had acquired two other of the exact same type and no longer
22 have them? It doesn't make sense. He's replacing firearms he
23 already bought and sold with other firearms he's going to buy
24 and sell because he's making money off of them.

25 Ladies and gentlemen, look at the defendant's March bank

1 statements, because all of these high-dollar purchases,
2 firearm purchases, other than the ones that were intercepted,
3 happened in March. And we have -- at this point, we have five
4 high-dollar firearms before the two that were intercepted,
5 five high-dollar firearms, all between the amounts of \$6,800
6 and \$8,500, that were purchased in the month of March, four of
7 the Barretts and one of the FNs, one of the FN belt-feds.

8 And if we look at the defendant's March Vantage West
9 statement -- and we heard from the defendant that Vantage West
10 is in fact his bank. If we look at the cash deposits -- and
11 I'm going to show you -- and you'll have this exhibit. It's
12 several pages, but this is Exhibit 89, and so I would
13 encourage you to take a look at Exhibit 89 when you're back in
14 your deliberations.

15 And we see some interesting deposit activities. We
16 see -- I'm sorry. I'm going to back up a little bit. We see
17 in the defendant's checking, because keep in mind -- I'm
18 sorry. We see in the defendant's savings account, because
19 remember he has a checking and a savings account, we see that
20 he has significant deposits on certain dates. We look at
21 March 26, for instance, and he has total deposits,
22 interestingly, made in a number of different, broken up in a
23 number of different transactions, but total deposits on March
24 26 of \$10,800, again the same month where he purchased five of
25 these high-dollar firearms he no longer has.

1 We look at March 7th. In his savings account, he has a
2 deposit of \$7,980. He also has a -- and I'll get to it in a
3 moment. He also has a deposit the same date of over \$1,000 in
4 his savings -- I'm sorry, in the checking account for a total
5 of \$9,560 deposited on March 7th. Or I apologize. It's the
6 same account. So if we look at -- the 7,000 you can ignore.
7 That's a transfer from one, from his checking to his savings.
8 But then we look at the 7th of March. When we total up all
9 these three amounts, these three separate deposits, it's a
10 total of \$9,560. Again, all of these deposits combined exceed
11 the price of all of these high-dollar firearms he was selling.

12 If we look at March 14th, a deposit of \$9,500 -- I
13 apologize -- a deposit of \$9,500. Again, you can ignore the
14 4,600. That was just a transfer from one account to the
15 other, his checking to savings, both Vantage West accounts,
16 but he's got a \$9,500 deposit.

17 He also has several other deposits. We do see the one
18 check, the one check that he deposits during this time period
19 is \$2,599.99, and we heard that that is consistent with what
20 he was making per month on his other job. But again on that
21 same date, we also have a \$2,000 deposit, which is consistent
22 with some of the other firearms that he was buying and selling
23 that weren't quite as high-dollar as the other. And we'll see
24 a lot of other smaller deposits throughout this account,
25 1,000, 440, because, as we know, he was buying and selling a

1 lot more than the Barretts and the FN belt-feds. But lo and
2 behold, we also see on March 21st the \$10,500 deposit as well.

3 So you look through all these records and you can find
4 actual deposits that match up with the purchases, an \$8,000
5 deposit on March 23rd, 2019, for instance. Now which one
6 directly corresponds to which of these five high-dollar rifles
7 he sold within the month of March? Certainly I won't claim to
8 you that the government knows exactly which one matches which,
9 but it's very interesting to note that all of these large
10 deposits exceed the price that he paid for these high-dollar
11 firearms and they match up. There were five purchased in that
12 month. There were five deposits or five dates with those
13 sizable deposits during the same month.

14 What's really interesting, though, when we look at the
15 defendant's income that he's making from these firearms, is
16 that there's a break in his purchase activity. We look back
17 to this chart and, for one reason or another, he doesn't buy
18 any firearms in the month of January. Well, if you look at
19 his bank statement for the month of January, there's not a
20 single deposit. He doesn't buy firearms; he doesn't have cash
21 deposits. This isn't someone who is making these tons of cash
22 deposits from their work. January, no firearms to sell, no
23 money in the bank.

24 And what's very interesting also is the same happens in
25 April. He did order some guns in April. He ordered, in fact,

1 two of them on April 2nd, but he never got to take possession
2 of them. ATF found out about what he was doing, and by the
3 time those weapons actually came in on April 19th, ATF had
4 intercepted them.

5 So in April he's not able to sell any guns. Look at his
6 bank statements from April. No deposits then either. And in
7 fact this chart makes it real simple. You have the bank
8 records to look into. But just to sum it up, the orange is
9 the money that he spent on the purchase of firearms and
10 firearm-related purchases that we know about. The blue are
11 the cash deposits in this account. And not only do they match
12 up and correspond, they exceed, showing the profits that he
13 was making.

14 Now it's not necessary that the government prove that the
15 defendant was making profits, just that that was his intent to
16 make a profit, but I submit to you the fact that he was making
17 profits was his motivation to keep engaging in this type of
18 activity over this period of time because he knew he could
19 make money off of it.

20 So, ladies and gentlemen, the last thing the government
21 has to prove to you as within the definition of one of the
22 elements is the defendant acted willfully. Now, as the Judge
23 will instruct you, willfully doesn't mean that the defendant
24 had to know of the federal licensing requirement. Now we
25 submit to you that he did. He talked about it. He talked

1 about going online. In fact, at the end of the interview, you
2 heard the statement -- I'm sorry. At the end of his
3 transport, you heard the statement when one of the agents --
4 and I don't recall if it was Agent Sutterley or Agent Bort --
5 told him, "Man, you should have just got a license." And he
6 said, "I know, I know. I was thinking." He talked about
7 having gone online and looked at that. He talked about
8 considering getting a license.

9 But in any event, we don't have to prove that he knew of
10 the license requirement. We don't have to prove that he knew
11 exactly what he had to do to get a license. We hear that
12 information is readily made available publicly, that there are
13 actually people at the ATF assigned to assist with that, but
14 that doesn't matter. All of that's of no moment. What we
15 have to prove to you is the defendant knew his conduct was
16 unlawful, that what he was doing was wrong.

17 Well, how do we know that? Well, let's look at all of
18 the evidence in this case, ladies and gentlemen. Let's look
19 at the statements that he made. Let's look at how evasive he
20 was with Special Agents Bort and Cunningham when they asked
21 him about his past firearm purchases. Specifically look at
22 the exchange, and I know a lot of you took very good notes,
23 but you also will have the ability to listen to the recording
24 if you want to. And if you don't recall it, I would urge you
25 to listen to it or consult your notes if you were able to take

1 notes about it. I know it was very fast. Some of it was hard
2 to keep up with. But the defendant, when he was asked about
3 how many firearms he had purchased in the past two weeks, and
4 we're talking about two weeks back now from April 4th, the
5 defendant says -- "Did you purchase any firearms in the last
6 two weeks?" He says, "No."

7 Ladies and gentlemen, two weeks prior to May -- I'm
8 sorry. Two weeks prior to April 4th would take us back to
9 approximately March 20th. Well, on March 20th, he picks up
10 two of the Barretts. On March 20th, he purchased two more of
11 the Barretts. On March 25th, he buys a Beretta. I'm sorry.
12 Also March 20th, he buys a pistol, one of them that he still
13 had, but he didn't even tell them about that he had purchased
14 that within the last two weeks. On March 25th, he buys
15 another Beretta again that he doesn't have. March 27th, he
16 buys those two additional FNs, the FNs he claimed that he got
17 rid of the first one because it jammed but then bought two
18 identical of the same one just a few days later. He also
19 bought the Browning M1919 and the three Anderson multi-caliber
20 receivers with matching uppers. He also bought a Diamondback
21 rifle, another Diamondback rifle. Remember, he said that he
22 bought the first one in early March. He buys the second one
23 now March 28th, less than -- just a week before ATF agents
24 spoke with him, and this one he didn't even have. This one he
25 actually bought physically, he picked up, and he had already

1 gotten rid of it in less than a week. March 30th, he orders
2 another Beowulf. And on April 2nd, he orders two more
3 Andersons in .50 caliber, with .50 caliber Beowulf
4 configuration.

5 So, ladies and gentlemen, if my math is correct -- I need
6 a second to count all these -- that's 16, 16 guns that he
7 bought in that preceding two weeks. And when asked directly
8 did you buy any guns in the last two weeks, "No." Why does he
9 say that, ladies and gentlemen? Because he knew it was wrong.

10 Now there is nothing wrong with buying 16 firearms if you
11 don't intend to sell them. There is nothing wrong with buying
12 16 firearms for your own personal possession, for your
13 collection, because you like them, because you want to go
14 shooting, whatever, for protection, to personally own them.
15 There's nothing wrong with that. That is not against the law.
16 But to buy them with the intent to sell them, that is against
17 the law. That's what the defendant did. Otherwise, he would
18 have no reason not to just say, oh, yeah, I love guns. I
19 bought 16 of them. They're awesome. Come to my house. I'll
20 show them to you.

21 But he didn't have them. He had no reason to say he
22 hadn't bought any if he knew what he was doing when he bought
23 those guns wasn't wrong, if he knew what he was doing when he
24 sold those guns wasn't wrong, if he knew what he was doing
25 when he repeatedly bought and sold firearms to make a profit,

1 to make money off of dealing in deadly weapons wasn't wrong.

2 Here's another interesting thing, and the defendant tried
3 to make much of this recall of the first FN that he bought,
4 and he had to -- he got rid of it right away because it was
5 jamming and somehow sold a defective firearm that didn't work
6 at a profit and told the buyer that it was jamming, but the
7 buyer was still willing to buy it at 2,000 more than retail.

8 Well, first of all, that doesn't make any sense, ladies
9 and gentlemen, but here's why the defendant brought up the
10 recall. Remember him telling the agents when he was being
11 transported, and again you can listen to it if you need to, "I
12 knew I was going to be arrested. I know why you guys" --
13 well, first of all, the first thing he says on April 4th,
14 "Yeah, I know why you guys are here."

15 Now the defense can make much of, well, of course, what
16 would ATF be there to talk about other than guns? But the
17 defendant said, "Yeah, I figured. It's a big order." Again,
18 there's nothing wrong with a big order. There's nothing wrong
19 with buying many weapons at a time. There's nothing wrong
20 with spending \$34,000 of weapons at one time. And that's
21 how -- by the way ladies and gentlemen, that's how much that
22 order was that the defendant went to pick up on April 4th,
23 \$34,000.

24 We heard that he made -- from his two witnesses that he
25 called, what did we hear about? We heard about \$34,000 from

1 one of his clients in a year, in the year 2019, and 30 -- I'm
2 sorry, 15, about \$15,000 from the other, roughly around 50
3 grand. He spends approximately -- I really should not put
4 myself in the position of doing math on the spot -- but over
5 two-thirds of his annual income that we know about on firearms
6 in one day. It doesn't make a whole lot of sense unless he
7 knew this is something he could make a profit on.

8 This was a business. Maybe it wasn't his primary
9 business. Maybe he devoted most of his time to his computer
10 business. It doesn't matter. There's no percentage. As you
11 heard from Industry Operations Investigator Lopez, a lot of
12 people get FFLs, or a federal firearms license, when they have
13 a full-time day job and the sales are just something that you
14 do on the side. That's okay. You can get a license to do
15 that, but again you need to get that license. You need to
16 fill out the application. You need to keep records. You need
17 to make sure you maintain, comply with those regulations so
18 that, for instance, the industry is properly regulated to help
19 prevent guns from going in the wrong hands. You can do that.
20 That's fine.

21 The defendant could have done that, but he chose not to,
22 maybe because it's easier just to buy and sell online, maybe
23 because he can make more profit that way. But for whatever
24 reason -- maybe he didn't want to pay the \$200 fee. I don't
25 know. But for him, it was a heck of a lot easier and a heck

1 of a lot more profitable to just buy and sell them on his own.
2 But whatever his motivation was, we know that his intention
3 was to make a profit.

4 But in any event -- and I'm sorry, I tend to digress --
5 when he goes up to pick up those five weapons in that \$34,000
6 order, oh, which also exceeds -- if you look at his 2018 tax
7 records for the previous year, \$34,000 is more than he claimed
8 to have made in 2018 total, and this is just three months into
9 2019 here, and within those three months, we saw one check
10 deposit from income.

11 In any event, April 4th, he goes to pick up that order
12 that in and of itself wasn't illegal unless the defendant
13 knew, unless the defendant intended to sell them. And he
14 says, "I told everyone, I told my mom, yeah, I'm going to
15 get arrested, I told my dad I'm going to get arrested
16 tomorrow," talking about what he was telling everyone the day
17 before, the day before he went to pick up the firearms.

18 Well, again, the defense can make much of, well, what
19 else would ATF be there to talk to you about? He didn't know
20 the day before that ATF would be there, but he had a feeling
21 he was going to get arrested. He had a feeling because he
22 knew what he was doing was wrong, and he had a feeling that
23 with that big order -- because, as you see, his orders keep
24 getting bigger and bigger. He gets bolder and bolder the more
25 he buys and sells without getting caught. So this new big

1 order that is more than he had ever bought at one time, you
2 know what? I might be flying too close to the sun. They may
3 find out. And sure enough.

4 Now what did he have to be worried about? What did he
5 have to be worried about getting arrested for? Again, if he
6 didn't intend to sell them, he would have done nothing wrong.
7 And this is someone, by his own statements, he knows about the
8 regulations. He knows about the laws regarding firearms. He
9 had nothing to be worried about. In fact, he talked to the
10 agents about other laws that he knew he wasn't violating. And
11 he's not charged with violating any other laws, ladies and
12 gentlemen. That's a thing. He's charged with dealing
13 firearms without a license because that is the crime he
14 committed, and that is the crime he was worried about getting
15 caught with.

16 So what does he do? He has a feeling like, oh, this is,
17 you know, this is a big order. What am I going to say? What
18 am I going to say if they're on to me and they want to know
19 why I don't have any of these guns anymore? All right. So he
20 does his research and he finds out that, oh, in 2017 there was
21 a recall on FN M249s. Well, one of the guns I bought was an
22 M249. Two of the guns I have coming in are M249s. So he
23 comes and says, "Oh, yeah, you know, that one was jamming
24 because of the recall, but these other two, these are post
25 recall."

1 No, ladies and gentlemen. First of all, jamming was not
2 the reason for a recall; and, two, all of the three firearms,
3 the one he bought and sold in early March and the two he was
4 coming to pick up that he had bought, that he was going to
5 sell, all of those were post recall. All of those were 2019
6 weapons that, according to FN themselves, were not subject to
7 that recall.

8 But he knew he had to have some sort of explanation, he
9 knew he had to have some sort of story because he did not have
10 a lawful explanation of why just days later, from some of
11 these purchases, he doesn't have \$111,000 worth of guns that
12 he had bought, \$111,000 total, ladies and gentlemen, with all
13 the taxes and fees and things. It's staggering.

14 So he has to think of something. He makes up the story
15 about it jamming. He talks about going to the firearm range
16 all the time, which we find out specifically the Tucson Rifle
17 Club, at least six times he talks about. We know that he was
18 there once. And he talks about shooting .50 calibers at the
19 Tucson Rifle Club because they have a range for it. Well,
20 they sure do -- again, he did his research -- but the
21 defendant never shot on that range.

22 So why is he saying this? Because he's got to do
23 something to mask his conduct, conduct that he knows is
24 illegal, and he knows exactly what's illegal about it. He
25 knows that you can't just buy guns to resell them. You can't

1 just buy and sell guns to make a profit like he was doing,
2 because that's exactly the type of behavior he was trying to
3 mask, trying to cover up.

4 Why did he have no firearms but boxes of the firearms
5 with the serial numbers removed? Because he didn't want the
6 agents to know about those purchases. He didn't want them to
7 find out about these additional guns he had bought and sold.
8 Why would you cover that up if those were just your own
9 guns that you had for a while? Why remove those serial
10 numbers? So again all of these things, ladies and gentlemen,
11 that show that the defendant committed this crime willfully.

12 And it's interesting, he throws down the words "hobby"
13 and "collection." Now again just saying that doesn't make it
14 so. And you can look at his purchase history. You can look
15 at all of these firearms he bought in such a short period of
16 time that he no longer has anymore. You can look at his cash
17 deposits that match up with these firearm purchases, and you
18 can conclude what his intent was.

19 He knew what he was doing when he was buying those guns,
20 maybe not the first gun he bought, maybe not back in 2017.
21 Maybe he originally got into this because he just likes guns,
22 but it became -- at some point, it became more than that and
23 it became a business, and that is when it became unlawful.

24 Ladies and gentlemen, I want to talk to you about one
25 more instruction that the Judge is going to give you, and that

1 instruction has to do with the government's burden, and again
2 the government always has the burden. It's not the
3 defendant's burden to prove he didn't commit this crime. It's
4 the government's burden to prove that he did. But I submit to
5 you we have. We have proven beyond a reasonable doubt that
6 the defendant engaged in the business of dealing firearms
7 without a license.

8 And I want to draw your attention to this instruction.
9 This is another instruction you're going to hear, once I
10 finally stop talking, from the Judge. Proof beyond a
11 reasonable doubt is not proof beyond any doubt. It's not
12 proof beyond all possible doubt.

13 Ladies and gentlemen, one of the great things about jury
14 service is you get to be human. You don't check your common
15 sense at that courthouse door every day when you come in. You
16 get to bring that common sense, you get to bring in that sense
17 of reasonableness to your deliberations in this case. It's
18 okay to have doubts. I don't know about you, I have doubts
19 about just about everything. But you still have to take
20 actions in life, and when you have doubts and you make a
21 decision, you make that decision based on your common sense.

22 So, for instance, yes, we can't look inside the
23 defendant's head and know his thoughts. We're not psychic.
24 But we can infer those thoughts from his actions. We can
25 infer his thoughts from all this evidence. And that's called

1 circumstantial evidence, and the Judge will tell you that that
2 can be given -- that you can give that equal weight to actual
3 evidence.

4 So we can look at all the evidence that shows what the
5 defendant's intent was in this case, but it's okay to have
6 doubts. We can think, well, you know, he said he was doing
7 this for a hobby. Is that possible? And we have to think
8 about that and think is that possible. But the government
9 doesn't have to prove the defendant's guilt beyond all
10 possible doubt.

11 So you ask yourself is that doubt reasonable. Is it
12 really reasonable that this was just a hobby when he is buying
13 the exact same gun again and again and again and selling them
14 again and again and again and profiting off of them again and
15 again and again? And except for those two relatively
16 inexpensive handguns, he didn't have a single one. All of
17 that money spent on guns, \$111,000, and what he had left was
18 worth about 400.

19 So, ladies and gentlemen, it's okay to have doubts. I
20 invite you to think about those doubts, discuss them with each
21 other, but then at the end of the day decide are they
22 reasonable. Did they make sense to me? When I look at this
23 chart, when I look at how many guns the defendant was buying
24 again and again, when I look at the types of guns and how
25 repetitive they were and how he's turning around the same day

1 he acquires certain guns, .50 caliber guns worth between --
2 that he's buying for more than 6, between 6 and \$8,000 and
3 selling for quite a bit more online, when he's ordering more
4 the very day he's getting some of them in, is this a hobby?
5 Is this someone who just wants these guns for his collection,
6 or is this someone who is buying them to make a profit?

7 I submit to you that the only reasonable conclusion is
8 the latter. The only reasonable conclusion is that the
9 defendant, we all know, did not have a license to deal in
10 firearms, nonetheless engaged in the business of dealing
11 firearms with the intent to make a profit off of his
12 repetitive gun purchases and sales.

13 I submit to you the government has proved that beyond a
14 reasonable doubt, and when you consider all of that evidence
15 that supports that the defendant did in fact commit this crime
16 beyond a reasonable doubt, we'll ask that you find him guilty.
17 Thank you.

18 THE COURT: Thank you, Ms. Woolridge.

19 Mr. Roach.

20 MR. ROACH: Red flags don't matter. The government's
21 ideas about what is suspicious or what they don't like don't
22 matter. The government's and ATF agents' interpretation of
23 what the law is doesn't matter. The only thing that matters
24 is the law that was passed by the United States Congress and
25 as the Judge instructs you on that law. That's the only thing

1 that matters.

2 So again and again throughout the course of this trial,
3 you heard these ATF agents, "Well, that was a red flag to me.
4 That was a red flag to me." It does not matter. The sole,
5 only question you have to answer in this trial is did
6 Mr. Delgado intentionally and willfully violate the federal
7 law. If he did, he's guilty. If the government does not
8 prove that beyond a reasonable doubt, he is not guilty.
9 That's it. That's the question.

10 So the government and the ATF agents may not like a lot
11 of things that happened, and that's fine, but I don't care and
12 you shouldn't either. The only thing that matters is, as a
13 United States citizen, we are told these are the laws, these
14 are the things to follow, right? So if they tell you, well,
15 the speed limit on this road is 45, right, and you do 46 and
16 they say, well, we don't like that because we really think you
17 should have been doing 35, therefore you're in violation, that
18 doesn't matter. It doesn't matter what they think should
19 happen on the road. They've got to tell you, the government
20 has to tell you this is the law so that you know what to
21 follow and what not to follow.

22 In this particular case, this is the law as the
23 government -- as the Judge will inform you, again, not as the
24 ATF wants you to believe or not as any one of these agents
25 wants. The key to this whole thing -- and I agree with the

1 prosecution, Mr. Delgado did not have a license to sell
2 firearms -- but proof beyond a reasonable doubt that he had to
3 buy weapons to sell them, right?

4 Sale -- let's see. The business of firearms, sale of a
5 firearm, devoted time, attention, and labor to selling as a
6 trade or business. So you can devote time, attention, and
7 labor to selling firearms and that's okay. It's only a
8 violation of the law if you are devoting time, attention, and
9 labor to selling the firearms as a trade or business, so not
10 as an ancillary thing that occurs and that might occur when
11 you're doing something else. It has to be -- to violate
12 the -- to be required to have a license, you have to devote
13 time, attention, and labor to selling the firearms as a trade
14 or business with the intent of making profit through repeated
15 sales.

16 So all these things are required. Any one of these
17 things doesn't happen, he is not required by law to have a
18 federal firearms license and you find him not guilty. Not
19 only that, they have to prove that he willfully did it,
20 intentionally did it, knowing that it was unlawful.

21 So let me give you an example just as an example of what
22 I was talking about, about it doesn't matter what the
23 government or any one of these ATF agents thinks is a red flag
24 or something they don't like. You remember Agent Bort got up
25 yesterday and he said, oh, you know, if you just bought one

1 gun, you could, in certain circumstances, be required to have
2 an FFL license. Well, the law says making profits through
3 repeated purchases and sales. So that's again just one
4 example of what the government thinks or what they don't like
5 is not the law. This is the law as given to you by the Judge.

6 So the government chooses to say -- and they sought an
7 indictment, and you heard Agent Cunningham talk about it. She
8 sought an indictment that from December 17th to April 4th,
9 2019, he should have had a license because of all these
10 things. So they bring this famous Exhibit 77 to you guys and
11 say, aha, this is how we prove it.

12 So this is my question to you. There is some handwriting
13 on here that's my handwriting. This is a photocopy of the
14 exhibit. You're going to get the original exhibit. So they
15 say, well, nobody in the history of the world has ever bought
16 more than one of the same type of gun. That's crazy. If you
17 do that, you must be buying with the intent to sell for profit
18 as part of a business and you must be willfully doing it
19 without a license, right? That's their -- basically the whole
20 theme, right?

21 So they say that he bought four of the same guns in May,
22 May, May, and July of 2018. But here's the thing. These are
23 bolt-action .22 rifles. These guns are scarier guns. They
24 don't indict. If that's the big deal, right, that's the
25 payoff on this thing is he couldn't be a collector, he

1 couldn't just be a dude who's got a bunch of money, doesn't
2 have anything else to do with it and likes to buy cool looking
3 guns, it can't be, ladies and gentlemen, because nobody ever
4 buys more than one type of gun. Well, then why isn't the
5 indictment for that time frame? Because it's not about him
6 buying the same kind of guns. It's about the type of guns and
7 that they don't like the type of guns.

8 Let me talk about that for a second. You remember two
9 days ago when they brought in all the guns and they were all
10 sitting right here? That was a pile of big guns, wasn't it?
11 I mean, that was a pile of big guns. Now let me ask you a
12 question. You're going to have pictures, and a bunch of
13 pictures have been admitted of those guns, what they look
14 like. Well, why bring them in, right? Why put them here? We
15 all know they've got pictures. Nobody's denying that these
16 are guns. Because they're scary looking, right? If he had
17 been accused of selling 39 cute little Derringer pistols that
18 shot little .22s, do you think they would have brought all
19 those out and laid them out on the floor for you? No, they
20 wouldn't. This is about the government not liking those
21 particular guns.

22 So listen, the gun laws in the state of Arizona and in
23 the country are obviously very contentious and people have
24 some really strong feelings about that. Some people really
25 want a lot more restrictions. Some people think that there

1 shouldn't be gun restrictions. That's fair. And I don't care
2 what your personal opinion is and you're entitled to that
3 absolutely, right? So you think there should be more
4 restrictions, great. You think that there should be less
5 restrictions, great. But we have to deal with, and when the
6 criminal law is talking about whether an individual person
7 committed a crime, we have to talk about the laws that are in
8 effect at that time.

9 So there's nothing wrong with any of those weapons.
10 There are probably some people -- if you showed that pile of
11 weapons to a group of 100 people, there will be some people
12 who would be scared and would be like, oh, my goodness, I
13 don't like that. That looks scary. Absolutely. I get it.
14 There would also be a group of people in there who would be
15 like, oh, my, that looks really cool. I would love to play
16 with that one. I would love to play with that one. Right?
17 That's cool too. It doesn't matter. But think about, and I
18 said this in my opening, not only what people say but why they
19 say it or, in this case, why they brought it in or, in this
20 case, why these .22 bolt actions are not part of the
21 indictment. It's because the government does not like these
22 kind of guns.

23 Now a lot has been made of -- and frankly, I fell into
24 this fallacy right now when I was just talking to you because
25 I said, you know, these guns are identical. Well, let me give

1 you an example, just like let's go back to these .22s. I have
2 three boys. When they were young, I bought a lever-action .22
3 rifle for them to learn how to handle firearms safely. Could
4 I have easily bought three-lever action rifles so that when
5 I'm out with them, they all three could be shooting the
6 lever-action .22 rifles? Yes. Would that have been a
7 rational thing to do? Yes. Would it have been rational for
8 me to do that and then sell it because the kids didn't like
9 shooting? Yes. Right?

10 So they're saying, one, three identical guns or four
11 identical guns, automatically you're a person selling guns
12 with the intent to make a profit for a business, willfully
13 doing it knowing you should have -- knowing that it's
14 unlawful.

15 But the fallacy that I fell into is the one that the
16 government talks about or makes all the time when describing
17 these guns. They're saying these guns are identical. They're
18 not identical or at least they haven't proved they're
19 identical. They often have the same base or the same
20 function, but they're not identical.

21 And let me tell you, let me show you what's been marked
22 as 96. You saw these guns in person. They are admitted.
23 These are the two guns, the last two guns that are on Exhibit
24 77 that were intercepted and that Mr. Delgado never got.
25 These are the same type of guns, but are these identical guns?

1 No. They look different.

2 I have, well, not really a friend, a guy I know who is a
3 sneaker guy and pays outrageous sums of money for sneakers.
4 It doesn't make any sense to me at all. And things that --
5 these little changes, these little things that make this gun
6 cool and this gun cool, something that he's interested in, I
7 don't get it. But if I'm a guy who is making a lot of money
8 with basically no obligations, no house mortgage payment,
9 lives with his sister, she pays the bills, he's allowed to be
10 like, man, that's cool. I'm going to buy a couple of these
11 weapons. He can get them, look at them, and then say, you
12 know what? I'm going to keep this one. I'm not going to keep
13 this one. I'm going to keep them both.

14 So the government will often -- well, they make
15 this assumption all the time, and what they do is they take a
16 blank, missing evidence, and then they try to shoehorn
17 or assume things that are not true or haven't been proven to
18 fill in those blanks in the evidence.

19 Example: Repeatedly the government said in closing but
20 even in opening, Ms. Woolridge said, "You'll hear that he sold
21 these guns, almost all 40 of them, soon after he bought them."
22 That's what she said to you in opening, "You'll hear that he
23 sold these guns, almost 40 of them, soon after he bought
24 them." Did you hear that? No, you didn't hear anything close
25 to that. What you heard is the government never recovered

1 most of these guns. What you heard is that Mr. Delgado said
2 that he did sell a couple of the guns, one because it was a
3 20-inch barrel, he wanted a 29-inch barrel, another one
4 because it was jamming, whatever.

5 So, but the key to this is the assumptions that the
6 government is making. He sold these guns. Well, where is the
7 evidence he sold these 40 guns soon after he bought them?

8 Well, he didn't have the guns on him when he went to the gun
9 store to pick up the newest purchases, his big purchase.

10 Okay. But you're not going to carry around those guns loaded
11 on you, right? He didn't have it on him. They searched his
12 house. They weren't in his house either.

13 Go back, I beg you, please, listen to both of the tapes,
14 the audios of the interviews that have been admitted in this
15 case. If you need to, listen to them a couple times, because
16 there are some things that the government told you in its
17 closing that I do not believe occurred, and I'm going to tell
18 you some things that I think are in those tapes. What I say
19 doesn't matter. If you want to go back in there and say, I
20 don't care anything that Brad said, fine. What the government
21 says doesn't matter in there. You guys, you are the jury.
22 You go back and listen to those tapes. But they never asked
23 him, where are all the guns?

24 So I used to watch this show Cops, you know, and I don't
25 think they do it anymore, right? So they're going to arrest

1 somebody and a couple cops go to arrest him, and they go,
2 "Don't move. Put your hands behind your back. Don't move.
3 Put your hands behind your back. Don't move. Put your hands
4 behind your back." Well, which one is it? Right? If you
5 start to move, put your hands behind your back, you're moving.
6 But if you don't put your hands behind your back, you're
7 resisting their orders.

8 My point is this: Go back and listen to the part of the
9 tape from April 4th where they're asking, as Ms. Woolridge
10 said that was so incriminating, "Oh, have you bought any guns
11 in the last three weeks, two weeks?" You will notice that
12 between the two of them, Agent Cunningham and Agent Bort, they
13 change what they're asking three times. "What have you bought
14 within the last two weeks? What have you bought since the
15 beginning of the month?" Again, this is April 4th. "What
16 have you bought since the beginning of March?" Go back and
17 listen. They're changing the goal posts as Mr. Delgado is
18 trying to think of what they're asking.

19 The government makes a big deal of this, oh, he bought X
20 amount of guns in those two weeks. Anybody would know that.
21 Well, here's the thing is the guns that she's talking about --
22 so you can purchase something, meaning you pay on Amazon for a
23 new table, right? If it hasn't arrived at your house, so you
24 don't have it, have you purchased it? I don't know. But
25 that's the question, because what she's saying, oh, it's

1 incredibly obvious, they were very clear, they asked what have
2 you purchased in the last three weeks, and he wouldn't answer.
3 They wouldn't maintain what they were asking; and, two, I
4 would say when you are being grilled by ATF agents and they
5 are trying to ask you questions, you could sit there and go,
6 wait, wait, are they talking about what have I ordered or are
7 they talking about what have I purchased and picked up?

8 I mean, and think about it. This is even true -- so me,
9 a 50-year-old guy driving down the street in my car. We can,
10 for the purposes of this, presume I'm not doing anything
11 illegal. I'm driving. All of a sudden I see a police officer
12 behind me. Uh. What is that? What has happened? What has
13 happened to each of us? Even if you're not doing anything
14 wrong, you see just a regular old police officer behind you,
15 you tighten up. Like, if they pull you over and they're like,
16 hey, you know, your tire is flat and you should get that
17 fixed, okay, thank you, Officer. But you're still nervous.
18 And that's me, that's me, somebody who looks like I do, not
19 doing anything wrong.

20 Now I can't -- none of us can put ourselves in somebody
21 else's shoes and what their life has been like, so I don't
22 know. What Mr. Delgado said was, and listen to the interview
23 that was on the 4th, that he's held in custody on the 5th and
24 they're bringing him back, and listen to the change in tone
25 and how at first, the first one, on the 4th, it's more they're

1 talking back and forth. And he sounds a little mad on the
2 5th, and what does he say? He says, "You guys stopped me
3 because I'm Mexican."

4 Now I'm not at all saying that this is true, that that's
5 why they stopped him at all, but what I'm saying is, from his
6 point of view, that's the life that he has lived, right, of
7 being a person of a certain ethnicity and how he's treated by
8 law enforcement that might be different from somebody else.
9 And again I'm not saying there's anything at all here that has
10 to do with his ethnicity, but that's what he said after he had
11 been sitting in jail. He's like, "I told you guys everything
12 yesterday." And he's mad because that's how he sees it.

13 Again, I'm not saying that that's true or not true, but
14 what I'm saying is that's how he felt. And when he's getting
15 interacted with by ATF, when he knows he's made a big purchase
16 and they're asking him questions and changing the dates, you
17 can't make a conviction based on him being a little confused
18 and trying to answer as accurately as he can under these
19 high-pressure situations.

20 Now if you -- well, not you. Being asked a question, and
21 the government already addressed this, but I'm going to talk
22 about it anyhow, because if ATF comes up to you and says,
23 while you're walking into a gun store -- I'm sorry, he's
24 already been in the gun store -- walking out, hey, I want to
25 talk to you about something, they're going to be talking to

1 you about guns. This is not a DUI investigation. They're not
2 investigating if your car is stolen. It's ATF. Of course
3 they're going to be talking to you about guns. He says that
4 he knew because Mr. Novak, the kid who was running the N&N gun
5 store, was acting squirrely, that he thought something was up.
6 All right. Why does that matter? Why does that -- why is
7 that actually essential to this case? Because he thought
8 something was up because he made a big order, which is not
9 illegal, but he made a big order, but he still showed up.

10 So he could have said, you know what? I'm doing
11 something illegal here. I know I'm doing something illegal.
12 This is a setup. I'm not going to show up. I'm not going to
13 get arrested because I'm not going to go there. That's not
14 what he did. He showed up, signed all the paperwork for these
15 guns, because in his mind what he was doing was lawful because
16 what he was doing was lawful, because this was his own
17 purchasing, buying, and selling or getting rid of guns that he
18 liked because he's a kid in a candy store with a lot of money.

19 So let's go through some of the timing on this when it
20 comes down to April 4th. The government says he sold 40 guns
21 soon thereafter, with no proof. What we do know, and even the
22 government admits this, is that he had a storage facility, an
23 access controlled storage facility, U-Haul storage facility,
24 for guns, right? Even the government said that in their
25 closing.

1 So on the 4th, he's arrested. On the 5th, he's brought
2 to court. On the 11th, a federal judge from this courthouse
3 says, "You cannot possess any firearms." He's ordered,
4 court-ordered, "You cannot possess any firearms." So what
5 does he have to do? Get rid of any firearms he has.

6 Now, one, you have proof of this, that that's what he
7 starts to do, because we've got the emails that he sent to
8 other people that he had ordered guns from, saying, "Hey, hey,
9 hey, stop, you know, I can't get those guns. I'm under
10 indictment or ATF arrested me." You got those emails. You're
11 going to see them. So he has got to -- he now has guns in his
12 possession. He's got to get rid of those guns.

13 So when you're talking about selling firearms as a trade
14 or business to make profits, selling firearms or disposing of
15 firearms to comply with a court order is not for a trade or a
16 business. So when they say on February 23rd, three weeks
17 after he's arrested, two weeks after he is ordered not to
18 possess any firearms, we don't find any firearms in his
19 firearm storage place, yeah, because if you did, he would be
20 in violation of the court order, right?

21 So what they do is they shoehorn that. We didn't find
22 any, so therefore he must have sold them; therefore, he must
23 have sold them at a profit; therefore, he must have sold them
24 at a profit because he wants to have a business; and therefore
25 he must have sold them at a profit for a business willfully

1 knowing that he should have -- that this was unlawful. So
2 that's the chain of assumptions they make from the fact that
3 they didn't execute a search warrant right away.

4 So again they had search warrants for phones, for the
5 car, for other things, they knew about the U-Haul place, and
6 they didn't do it until the 23rd, after he was told he can't
7 have firearms. So again they're making assumptions, the
8 government is making assumptions, but you can't convict
9 somebody on an assumption. You have to convict somebody with
10 evidence.

11 So let's talk about how people say things and how --
12 because I think I opened this -- in opening, I talked to you
13 about this too. So, and I want to compare Agent Cunningham
14 and Agent Bort in terms of their testimony and how they
15 testified, right? Because it matters and it matters in a
16 couple of ways.

17 One of the jury instructions you're going to get is
18 you're supposed to assess all witnesses the same, and the
19 Judge will tell you, you know, how you can make those
20 assessments. So, in other words, a police officer, a priest,
21 a surgeon, a psychologist, a medical doctor, a trash man,
22 everyone when they get up there is the same, and then you try
23 to figure out, based on how they talked, if you think, all
24 right, I should believe all, some, or none of what they said
25 and how they talked.

1 So police officers, like anyone else, are humans, and let
2 me give you an example of what I mean. Has this ever happened
3 to you? You go out and you buy a new Toyota Highlander,
4 right, because you went to the auto store and you saw one that
5 you liked, fits your family, whatever. So you buy a new
6 Toyota Highlander and now when you're driving through the
7 streets, all of a sudden you're seeing all these Toyota
8 Highlanders that you never noticed before. So it is just kind
9 of human nature. This thing is brought to your attention that
10 you wouldn't have paid attention to before. It's not that
11 there's magically more Toyota Highlanders. It's just that's
12 what's relevant to you. So when these ATF agents are talking
13 to you, they are relating to you the world as they saw it
14 based on their particular views, their lenses.

15 So I'll give you an example. Agent Cunningham was asked
16 by the prosecutor did he have or was there computers -- no.
17 This actually I think may have been a juror question. But she
18 was asked, "Did you see any computers or any computer stations
19 in the house?" And she said, "I didn't" -- let's see -- "not
20 that I saw." Okay. So that could be one of two ways. That
21 could be, "No, there were none"; or when I went and followed
22 up, what she meant is, "Not that I saw. I looked through the
23 pictures. I don't remember seeing anything. I didn't go to
24 the house." Right? So this is an accurate statement, "not
25 that I saw," but it is -- can be viewed in two ways. So Agent

1 Cunningham cleared it up and she was like, "No, no. What I
2 mean was, like, I didn't look at those pictures. I didn't see
3 it."

4 So if I had asked Agent Bort -- you guys make your
5 decision on this. But if I had asked Agent Bort, hey, is
6 yesterday Wednesday, he would have said, well, I mean, the
7 Gregorian calendar, or it depends on whether or not you call
8 24 hours yesterday. Anytime I would ask him a question, he
9 would not answer it or would evade or would try to see where I
10 was going and try to go in a different direction.

11 Just I want to compare the method by which he testified
12 by the method by which Agent Cunningham testified, and this is
13 why it matters. What I say about the evidence doesn't matter.
14 What the government says about the evidence doesn't matter.
15 You're going to have audiotapes of two interviews. Listen to
16 them, please, because that's the evidence. Listen to that.

17 Now Agent Bort said my client said X, Y, and Z in his
18 third interview that you do not have the audiotape for, you
19 can't go back and listen to. Well, you know, he said it, but
20 maybe he said it in one way versus he said it in another. Let
21 me give you some examples.

22 So Agent Bort was asked, oh, did Mr. Delgado ever say
23 that, you know, his company is doing gangbusters and he's --
24 in 2019, all of a sudden he was making a ton of money? A
25 question like that. And he said, "No." And then I said,

1 wait, wait, wait. Show me anywhere in the transcript that
2 anybody said anything about 2019. He said it's not there.
3 And I said, so somebody asked him about the economy in
4 general, and he said X, Y, and Z. Then he said, "Well, I took
5 that to mean" or "I assumed," words to that effect. Well,
6 that's the problem is when somebody is going through their
7 lens, what they want, what they desire, and telling you, "I
8 assumed." But that wasn't my question. He never told you.

9 So let's go through my client's, both his actual monetary
10 situation and what he said in this particular case. So April
11 4th, they ask him directly, "Where did you get this money?"
12 And he goes, "I got it from work." He tells them directly on
13 that date, "I got it from my work." He tells them what he
14 does.

15 Why, why did nobody bother to look for his tax returns
16 until September of 2019? That's what Agent Cunningham said.
17 That matters. It does. And I'll give you an example. If
18 they had just seen a piece of paper saying Bill Gates just
19 bought these five weapons, wouldn't a wise investigator go,
20 let me just check to make sure this is not the richest man on
21 earth, right? Because the richest man on earth might behave
22 differently in terms of buying expensive things than some of
23 the rest of us, because it does matter when they start saying,
24 oh, he spent a lot of money.

25 He did spend a lot of money. Nobody bothered to look.

1 They didn't even bother to check to see if he was making, you
2 know, 15 bucks an hour working at Burger King, what he was
3 doing, what kind of income he had so therefore it could make
4 sense that this was a collection. This was something like a
5 kid in a candy store versus somebody who was running a
6 business. They didn't check, just made assumptions. But he
7 told them, "Look, man, I make money." He said, you know,
8 "I've got a \$2500 check." On April 5th, he goes, "I've got
9 hundreds of invoices waiting for me." Right? But nobody
10 paid attention, nobody checked, and nobody went back to even
11 find his tax returns.

12 So tax returns, I get to talk to you -- the government
13 has the burden of proof, so they get to talk to you again. I
14 don't get to go next. So I don't know what they're going to
15 say. I can have some ideas on what they're going to say, but
16 I don't know what the government is going to say. So let me
17 try to look ahead and see if I can figure out why they're
18 going to complain about the evidence that we produced. And I
19 use that word intentionally because every step of the way
20 evidence -- so my client says, "Look, man, I got this money
21 from work. Look, I got this -- this is a hobby." And they're
22 like, "Well, you know, we don't believe you." Right? They
23 don't believe him. "Look, I took pictures of these guys."

24 Go back and listen to when Agent Bort was talking to him
25 and he said -- this was on April 5th, so again you can listen

1 to this. He said, "I take pictures of buyers." And Bort even
2 says, "Well, that doesn't even matter." Go and listen. He
3 said, "That doesn't matter. You didn't take pictures of the
4 driver's license." So it doesn't matter what evidence that he
5 produces or what he says. They have a preconceived notion in
6 their mind, these are big guns, I don't like them, and
7 therefore I'm not going to listen to any of the evidence.

8 So we've got his tax returns, 2000 -- well, going back a
9 long time, but let's say 2017, 2018. Some things that I want
10 you to notice, tax return 2018, on page 6 of 7 on the tax
11 return in 2018 -- and you'll get this -- he lists, in filing
12 the taxes, expenses, \$17,922 for car and truck expenses. So
13 he writes off -- and there's a picture of the truck that he
14 was driving in this case. So he writes off the truck that he
15 bought in 2018, or something close to it, in an expense.

16 So for most of us in the world -- and that's why I asked
17 at the beginning, because I think there are some people who
18 have had their own businesses over the years. But most of us,
19 you get a paycheck from somebody else. It's X amount of
20 money. But when you own your own business, you're allowed to
21 write off and to take other exemptions, do other things, such
22 that it's harder to say how much money you take home.

23 Because in 2018 his total income -- that means profit
24 that he took home -- was \$33,000, which is good money, but
25 it's not great money. Well, but keep in mind that he bought a

1 whole car, \$17,000 he was able to write off on a vehicle, so
2 that's the kind of money he's making to be able to spend that
3 kind of money on a vehicle, with somebody, in 2018, who has no
4 dependents, no student loans, no mortgage, right?

5 So this is a kid who is making good money. 2020 rolls
6 around, he gets a few more clients, and he's making great
7 money. He makes, and you're going to see this, \$200,000 in
8 income. He wrote off stuff for his business, other things, so
9 that's \$200,000 over the course of the whole of 2019 in
10 income.

11 So I don't know what the government's going to say.
12 There's a stipulation that he still owes his income tax.
13 Yeah, he does. You know, but if you look at 2018, 2017, those
14 tax returns, he still owed those income taxes too back then.
15 It doesn't really matter. What he -- what this is is him -- a
16 federal document saying, "This is how much I made in 2019."
17 The government's going to say, well, that's -- you know, you
18 can't believe that. I don't know what position they're going
19 to take. Well, again, it's another bit of evidence that we
20 bring forward and they say, no, you can't tell anything from
21 that.

22 Well, then I bring in his clients, a couple of his
23 clients. They talk about how much they pay him. They talk
24 about him being a genius when it comes to computers, available
25 day and night. He makes money. For just a little bit of

1 time, he makes a lot of money. Just from one client, PHCC, in
2 2019 he made 35 or more thousand dollars from that one client.
3 So all it takes is five clients, and he's up to this \$200,000
4 range. So the point being when you're trying to decide is
5 this a guy who has got a ton of money with no real obligations
6 in the world and he just likes to buy guns.

7 The pattern by which he buys guns is really interesting
8 because he'll, like, order some guns, right, and then this is
9 again and again through this. You'll see on 77 he orders some
10 guns and goes -- and then while he's in the store, he grabs
11 another and another, right? Is that an investor scoping out
12 all his potential properties he is going to buy and sliding in
13 to get the best possible property so he can resell it later,
14 or is that a guy who's got a lot of money who is like, he goes
15 in to buy some guns and he goes, "Oh, that one's cool too, I'm
16 going to buy that one"? That's what it is is a guy who just
17 likes to buy guns.

18 Of interest to me, at least, is where on April -- I'm
19 sorry, on February 11th, he goes into the store and he's like,
20 "Oh, my goodness, that's a cool looking gun." He's like, "I
21 want to buy that." But he doesn't have the \$8,000 on his
22 person. He just sees a cool gun and he wants to buy it, so he
23 puts it on layaway and he comes back later, on the 19th, and
24 buys the gun, again a guy who is like, "Well, that's cool. I
25 would like to have that gun."

1 Now in terms of profit, right -- because they're saying
2 if he's buying guns and selling them, that's not a problem.
3 If he's buying guns and selling them with the intent to make a
4 profit, that's when it starts getting a little more dicey,
5 right? So they claim again from an interview that you cannot
6 hear and you will not hear, Agent Bort said that my client
7 said X, Y, and Z. But the key is not whether or not he sold
8 guns but whether he sold them with the intent to make a
9 profit.

10 Here is Exhibit 208, which has been admitted. This is
11 the listing that he makes for this firearm. He lists it for
12 \$8,800. So even the government says, oh, yeah, you know,
13 that's the listing. And they put it right here, the listing
14 that he put on Armslist. So he pays \$8,500 and he lists it
15 OBO for 8,800. What does that mean when you take out shipping
16 and everything else that he's going to have to do or whatever
17 he's going to need to get this gun to somebody else? That is
18 essentially no profit that he's looking for, 3 percent, 2
19 percent. You do the math, you know, an incredibly tiny amount
20 of profit. That's not a guy who is listing something and
21 hoping to make a profit as part of a business. That's a guy
22 who is selling a gun that he doesn't like for one reason or
23 another, just looking to get his money back.

24 So, you know, they're saying, oh, well, maybe he listed
25 it for this, but he said that people paid more and the buying

1 or the bidding went up. But, see, that's why it matters and
2 that's why these words that I'm talking to you, talking about
3 matter. His intent, if he wanted to make a profit and thought
4 he could make a profit, he would have listed it for more
5 money. He thought he was just going to get basically his
6 money back, and that's what he listed it for. So if he got
7 lucky and somebody paid him more than he offered, great, cool,
8 but that's not somebody with the intent to buy a gun and then
9 sell it for a profit as part of a business. You see, that's
10 why these things matter.

11 You also see the -- and I still didn't quite understand
12 exactly what the government was saying, but they were saying
13 there is this listing, No. 18 on 77 that was purchased for 869
14 bucks plus 45 in shipping, and then I think they said he
15 needed either 19 or 20 to resell it as he was doing. Anyway,
16 the point being you're going to find an email in there where
17 somebody's offering either 500 or 800 bucks for it. And the
18 only reason that matters is, without making assumptions,
19 without filling in a blank in the evidence with what the
20 government wants you to believe, the evidence shows that, at
21 least from what he's being offered, is not a profit. He is
22 not making money. So, and he's not -- and there is no
23 indication that he is listing these things well over whatever
24 it was that he bought them for to make a profit. They want
25 that to be true, but it is not.

1 I'm going to -- so a couple more things that I think it's
2 important for you to consider. So again Agent Cunningham is
3 asked a question about the computers in Mr. Delgado's house
4 and said, "I didn't look at the pictures upstairs, so I don't
5 know." She's also asked, "Well, did you see any videos of his
6 gun usage in the electronics?" So this is Exhibit 200 that is
7 going to be back to you guys, for you guys, the pictures or
8 video of Mr. Delgado using one of these guns, like somebody
9 who just got a new gun, and he's like, "Hey, dudes, check this
10 out." And he's showing somebody, taking a video of a new gun.

11 What I'm saying is they didn't look through all this
12 evidence because she didn't even recognize one of these videos
13 or barely recognized one of these videos, and that is
14 understandable because I think what she said is when you
15 download somebody's phone, there's a massive amount of
16 information there. So I get it, you're not going to memorize
17 everything, but it's important to note, just because somebody
18 said they didn't see it doesn't mean it's not there. You see
19 the difference?

20 She also was asked, "Do you remember him saying anything
21 about making a lot of money in his business?" And she said,
22 "Not that I remember." Go back -- she was there for the April
23 4th interview. Go back and look at that interview. And he
24 said, you know, "I'm making money. I make money through my
25 business. This is where it's coming from."

1 So something interesting that Agent Bort said, this is
2 one of those things that if I have my memory different than
3 yours, you go with your memory. But I remember the government
4 asking him a question, you know, about collections, and he was
5 like -- and he said an answer that was, you know, "I've seen
6 military guys get their re-up bonus and buy five or six of
7 something." I don't know if you guys remember that, five or
8 six of something. So their point that nobody ever in a
9 collection would have more than one of the same type of gun,
10 it's just not accurate, and people collect things for
11 different reasons and people have things for different
12 reasons. And just because more than one type of gun is not
13 something that the government would do or not something these
14 particular ATF agents would do is not a crime, and that
15 doesn't matter.

16 Fundamentally, ladies and gentlemen, when it comes down
17 to it -- oh, okay. I'm sorry. One more thing that I want to
18 clarify just because it was brought up, and maybe you guys
19 know this, maybe this has happened to you. But there was a
20 question about a bunch of \$1,000 deposits that you see in the
21 Vantage West, and I don't know if anybody's ever tried to go
22 to deposit cash in an ATM machine, whether or not they limit
23 the amount that you can do in each one. It doesn't matter.
24 It was just one of those statements that the government made
25 that I didn't want any juror to think, oh, you know, to put

1 too much undue interest in it.

2 Again, if the government wants to say that he's
3 intentionally doing this and willfully doing it when it's
4 unlawful, why is he using his bank account? Why is he using
5 his correct name on all these ATF forms? You know what I'm
6 saying? Why does he go to the actual firearms dealership when
7 he suspects, by the way that the clerk was acting, that the
8 ATF objects to his big purchase of firearms? Because he's a
9 guy who is making good money, who buys stuff, sells stuff,
10 buys two of them, picks which one he likes, whatever.

11 All the assumptions that the government is making, that
12 he is buying with the intent to get a profit, with the intent
13 of a business and willfully knowing that this is illegal, is
14 not even close to have been proved in this case. What they
15 did prove is he bought a lot of guns. What I proved to you is
16 he made a lot of money and he can buy whatever he wants. And
17 that's where we live. That's the United States. He has been
18 told this is the law. He attempts to follow the law because
19 he tells them, he's like, "Look, dude, this is a hobby. This
20 is something I do. My business is computers, and I just like
21 guns." And that's what the evidence has shown. He bought a
22 lot of guns, he likes guns, and he sold a couple. He didn't
23 try to make any profit, try to make profit -- maybe he did.
24 He didn't try to make profit from the guns that we did see
25 that he sold.

1 He is not guilty, and I ask you to consider everything.
2 Please go back and listen to these tapes to see if it's
3 consistent, if it sounds like some kid who just goes in and
4 buys cool things when he sees them. Go back and listen to the
5 tapes, and then I ask you to find my client not guilty.

6 THE COURT: Thank you, Mr. Roach.

7 MR. ROACH: Thank you, Your Honor.

8 THE COURT: We're going to take a brief morning
9 break. I know it's been a little longer than usual.

10 I'll remind you of the admonition: Keep an open mind,
11 don't talk about the case, don't do any independent
12 investigation.

13 And we'll do a ten-minute break just to let everyone get
14 up, walk around, use the facilities, and then we're going to
15 finish with the government's final rebuttal closing, I'll give
16 you instructions, and then we'll order lunch and turn the case
17 over to the jurors.

18 So I'll excuse the jurors at this time. If you'll please
19 be ready to come back into the courtroom in ten minutes.

20 (Jury out, 11:07 a.m.)

21 THE COURT: All right. Counsel, we'll see you in ten
22 minutes. Thank you.

23 MS. WOOLRIDGE: Thank you, Your Honor.

24 (Court recessed from 11:08 a.m. to 11:21 a.m.)

25 THE COURT: All right. We're back on the record.

1 Counsel is present and Mr. Delgado.

2 I understand, counsel, there's an issue.

3 MS. WOOLRIDGE: Yes, Your Honor. I didn't object
4 during defense's closing statement because I think that's
5 inappropriate in most circumstances, but, Your Honor, I was
6 very concerned about the statements that were made about the
7 third recording that the jurors did not hear.

8 The jurors -- I'm sorry. The parties did stipulate to
9 the accuracy of the transcription. There was also a lot that
10 was redacted upon request from the defense as well as by
11 agreement from the parties. There was information in that,
12 peppered throughout the statements, that was very prejudicial
13 to the defendant and that the government certainly did not
14 want to introduce because it felt it was improper. Some of
15 those things were things we discussed, discussion of his
16 knowledge of destructive devices and other prohibited weapons.
17 There was quite a bit of discussion about fully automatic
18 weapons and the defendant's knowledge of that. There were
19 certain things that the parties agreed were inappropriate,
20 such as references to Mexico and references to ammunition.

21 That's the reason that the -- because those -- because
22 things that were prejudicial -- I know at one point the
23 defendant talks about being arrested other times. Because
24 there were things that were prejudicial throughout that
25 portion and because we felt that such a small portion of it

1 was relevant that trying to do redactions would be unwieldy
2 and would not present well due to a very choppy recording, and
3 this is something that was discussed by counsel, we introduced
4 it through the testimony and what we agreed was an accurate
5 transcription instead.

6 The defense then argues that the jury should hold against
7 the government the fact that they're hiding something, that
8 the government's hiding something by not playing the
9 recording. I think that's absolutely improper, especially
10 given the understanding of the parties and their reason for
11 the very -- for the redactions or the use of just the
12 transcript. Certainly we could have excised a very small
13 portion, but I think it would have left them with the same
14 impression, that obviously something was missing. And the
15 reason those things were taken out, in large part, is because
16 they were either irrelevant or potentially unfairly
17 prejudicial to the defense.

18 My request, Your Honor, is that the jury be told that
19 perhaps -- and of course I defer to the Court as to the best
20 language to address it if the Court chooses to grant my
21 request -- but that the jury be told that the reasons that
22 certain audio was played was for other reasons and the jury is
23 not to speculate about that or to hold it against the
24 government.

25 THE COURT: Mr. Roach, is it true that there was a

1 stipulation as to not -- as to relying on the transcript and
2 to have the testimony be brought out through Special Agent
3 Bort?

4 MR. ROACH: No, Judge, not at all. What counsel and
5 the government -- what I discussed with the government was the
6 transcripts that are contained in Government's Exhibits 67 and
7 68. So those are the transcripts of the audio, 67 and 68. We
8 explicitly talked about them. We talked about things that
9 were inappropriate. I told her things that I thought were
10 inappropriate and she took out. So I had no problem with
11 that.

12 I had no idea that she planned to do anything with any
13 other statements of my defendant until the morning of trial,
14 when she handed me Exhibit 97. I still have not gone back and
15 listened to this and compared it to the audio because I
16 haven't had time. So, Judge, no, there was nothing about this
17 that I ever stipulated to anything.

18 Moreover, I would love to have had this audio in because,
19 if you remember, I wanted to ask detailed questions about
20 actual things that were said by my client, and the Court
21 determined that that was hearsay. So if we had talked ahead
22 of time, I could have said, I could have argued with counsel
23 about why I think this is the whole story and then counsel
24 could have said X, Y, and Z. But, no, I never stipulated to
25 97 nor knew that it was going to be talked about until the

1 morning of trial.

2 So that's why it was, in my mind, an intentional decision
3 by the government to talk about the other things and admit the
4 audio but not admit this. It could have been done. There are
5 some redactions that need to be done but not that much. So
6 that's why it was notable to me that the government chose to
7 go in that direction, and that's why I brought it to the
8 government -- or to the jury's attention.

9 THE COURT: How much is Mexico referred to in the
10 transcript? Do you know?

11 MS. WOOLRIDGE: Your Honor, I think more so than the
12 references -- and I can look, but more so than the references
13 to Mexico are references to things like ammunition that the
14 parties have agreed not to get in. And that's -- and I'm
15 sorry. I didn't mean to stipulate -- I didn't mean to suggest
16 that the parties had stipulated or directly discussed that,
17 hey, we're going to introduce these statements through this
18 way, but more of we stipulated to the accuracy of the
19 transcription as well as the redactions that were made.

20 So defense counsel is correct in that I did not say these
21 are the statements we are going to get in through the
22 testimony of this witness until the beginning of trial, but it
23 was my understanding that we were in agreement with regard to
24 the accuracy of the transcriptions and the redactions for what
25 was going to be introduced in the recording.

1 THE COURT: When did you give Mr. Roach the
2 transcript that he could determine that it was accurate?

3 MS. WOOLRIDGE: I don't recall exactly when it was
4 provided.

5 THE COURT: Was it before trial?

6 MS. WOOLRIDGE: Yes.

7 THE COURT: I know that I received a copy during
8 trial. It was passed to me. Mr. Roach said he got it on the
9 first day of trial.

10 MS. WOOLRIDGE: Yes, Your Honor. The reason, because
11 we did not intend to -- so that was the thing. We had --

12 THE COURT: Okay. So just as to the factual issue --

13 MS. WOOLRIDGE: Okay.

14 THE COURT: -- when did the transcript get given to
15 the defense?

16 MS. WOOLRIDGE: Your Honor, the transcription itself
17 was given before trial. The transcription as an exhibit was
18 given the morning of trial because it didn't become relevant
19 to me to introduce that statement until the defense made its
20 disclosure about the income and the taxes and I realized that
21 that was going to be an issue until the Friday afternoon
22 before trial.

23 So, yes, we originally -- this was originally redacted
24 initially, and that's why there is no recording. So it was
25 provided. The defense did have the transcription prior to

1 trial, and I believed our understanding, as far as the
2 transcription being accurate, applied to that, although
3 agreeably that was not part of the recording we were going to
4 get in, because again the vast majority is irrelevant. There
5 is some -- there is a lot of discussion about the Dark Web,
6 you know, illegal trading, illegal weapons, things like that.
7 There's also talk about the defendant's rights and attorneys
8 and things like that as well that could be --

9 THE COURT: All right. It sounds as though there was
10 not a stipulation, though, as to the exhibit. So I understand
11 your argument, but I'm going to decline to give the additional
12 instruction.

13 All right. I'll ask that the jurors be brought in.

14 Ms. Woolridge, how long do you expect your rebuttal close
15 to be?

16 MS. WOOLRIDGE: Definitely shorter than my opening
17 close, Your Honor. I'm really, as Your Honor knows, I'm an
18 incredibly bad judge of time. I don't even know how long I
19 spoke on my opening close, but I would say my notes are about
20 a third of the length of my opening close, so --

21 THE COURT: I just want to be mindful of the time,
22 given that I'm not giving the jurors a lunch break, that
23 they're not going to have had one. So we'll have to have your
24 rebuttal close, then the instructions. Then I would like to
25 send them to deliberate and order lunch. But I don't want to

1 wait until too far into the noon hour to do that because it's
2 going to take another 30 minutes for their lunch to arrive.

3 MS. WOOLRIDGE: Sure. Your Honor, I don't think that
4 my rebuttal close will be 30 minutes, and certainly --

5 THE COURT: All right.

6 MS. WOOLRIDGE: -- I think it would be less than
7 that. And certainly I am more than amenable, if the Court
8 notices that I'm approaching the 30 minutes, I don't mind --

9 THE COURT: Well, I'm not going to encourage you to
10 speak faster, just given I know you were speaking pretty
11 quickly during the first close, so I don't want to put you in
12 that position. But if you would be mindful of the time --

13 MS. WOOLRIDGE: Certainly.

14 THE COURT: -- that would be appreciated. When I
15 sent the jurors out and didn't have Ms. Coronado pass out the
16 lunch orders, it's because I thought we were going to start
17 ten minutes ago. I didn't realize there was another issue,
18 but that happens sometimes.

19 MS. WOOLRIDGE: I apologize for that delay.

20 (Jury in, 11:32 a.m.)

21 THE COURT: All right. We're back on the record.
22 The jury is present, counsel, and Mr. Delgado.

23 The break was a little longer than anticipated. We had
24 to resolve some logistical issues, but we're ready to proceed.

25 And, Ms. Woolridge, if you'll go ahead and give your

1 rebuttal closing.

2 MS. WOOLRIDGE: Thank you, Your Honor.

3 Well, ladies and gentlemen, I am not only standing
4 between you and the end of your jury service or the last part
5 of your jury service, which is deliberations, but also between
6 you and lunch, so I will try to make this brief. And as
7 you've heard, what the lawyers say is not evidence. The only
8 thing -- and I agree with Mr. Roach -- the only thing that
9 matters here is the law.

10 Now we talk to you because we want to help you understand
11 the law and apply the evidence in the way that we believe it
12 should be applied, but really it's you, ladies and gentlemen,
13 it's your knowledge of the evidence, it's your assessment of
14 the evidence and your application of the law that the Judge
15 will instruct you on that evidence that really matters, not
16 what I say, not what Mr. Roach says, and we agree on that.
17 But I just want to talk to a few things about the evidence,
18 and then I want to talk to you about the law because the
19 evidence proves that the defendant broke the law, that that's
20 the only reasonable conclusion in this case.

21 Now again I'll try to make my remarks brief and be
22 mindful of your time so you may begin your deliberations and
23 start discussing the law and discussing the evidence. There's
24 a few things to point out what is not required to engage in
25 the business of dealing firearms without a license. It

1 doesn't mean that it's your sole trade or business. As we
2 heard, it can be kind of a side job. It can be something that
3 people just do in addition to their regular full-time job.
4 But as long as you start making repetitive firearm purchases
5 with the intent to sell, with the intent to make a profit, it
6 becomes a trade or business. Again, it doesn't have to be a
7 certain percent of your income or a certain percentage of your
8 time. There's no, you know, you must spend a certain number
9 of hours or make a certain number of money or even deal in a
10 certain number of guns; but if you're making repetitive
11 purchases with the intent for profit of firearms, that is
12 engaging in the business.

13 Now the defendant's sale of firearms was not just
14 incidental, as the defendant claims. That is the reason for
15 his purchases. Again, it may not be the reason for all of his
16 purchases. He may have started out again as a gun enthusiast,
17 as someone that liked guns, maybe even was interested in
18 collecting them. And that's why, ladies and gentlemen -- the
19 defense makes much about the dates in the indictment. That's
20 why the government is not charging the defendant with all of
21 the dates of his firearm purchases, because it may be possible
22 that when he started out being interested in firearms he
23 didn't realize that, hey, this is something I can make money
24 off of too. But it was after he started making those sales
25 and he realized how lucrative they could be that he started

1 buying specific guns with the intent to sell them for profit.
2 Even if his first, again, firearm purchases, his first firearm
3 sales were originally just something he was kind of interested
4 in as a hobby, it became a business.

5 And so, ladies and gentlemen, the defense makes a lot
6 about the dates in the indictment. Well, I submit to you a
7 couple things to take into consideration. We heard that the
8 defendant was charged in this case on April 24th. That's when
9 the government sought an indictment for engaging in the
10 business of dealing firearms without a license, and the date
11 range started on December 17th, 2018, because those were the
12 purchases that the government -- the time when the repetitive
13 purchases that the government knew about became very, very
14 concerning, when we have, for instance, on that date three
15 Smith & Wessons followed by again the Romarm rifle that he had
16 purchased, similar or identical to those he had purchased
17 before. That's when that pattern, based on what the
18 government, the purchases the government knew of at the time,
19 started to become very evident.

20 Now then, as you heard from Special Agent Cunningham, she
21 kept investigating over several months, actually over a few
22 years and found out more purchases, found out purchases, that
23 these purchases started sometime ago. Now I will tell you --
24 talk about being damned if you do and damned if you don't --
25 had the government gone back and charged the defendant with

1 additional dealing of firearms without a license, we would
2 have heard, oh, they're just out to get him, they're adding
3 more charges.

4 No, ladies and gentlemen. In fact, we're giving the
5 defendant the benefit of the doubt. Even if he started this
6 firearm purchase activity just as something he was interested
7 in and not with the intent to make a profit, it certainly
8 changed when he realized how much money he could make off the
9 sale of the firearms.

10 And as the Judge will instruct you, it's not necessary
11 that the government prove the exact dates that things
12 happened. That's why we charge on or about, as long as
13 something happened around that time frame. So you could
14 conclude that his dealing began actually quite a bit
15 beforehand, this unlawful dealing, but it certainly
16 encompassed some of the activity, if not all of the activity,
17 in the December date range -- I'm sorry, the December to April
18 date range.

19 In fact, even if you believe that the defendant, for
20 instance, bought this first Barrett, the one he sold, posted
21 for sale the very next day after he got it, but even if you do
22 believe he got that and when he sold he had no idea he would
23 make that much money off of it and wasn't trying to make that
24 much money, once he realized that he could, those five
25 additional Barretts he bought all within the next month, those

1 were with the intent to make a profit, and his bank records
2 reflect that. They reflect that profit and they show how
3 quickly those firearms were sold. In fact, again, less than a
4 month after he bought them, those additional Barretts, he
5 doesn't have any of them.

6 So I'll submit to you that Exhibit 77, yes, there are
7 dates, there are firearms that start even before the date
8 range in the indictment, but that helps you understand the
9 whole picture. It helps us to infer what the defendant's
10 intent was. We know he's been dealing firearms for quite some
11 time now, so at least, at the very least, when we're talking
12 about on or about the dates in the indictment, he's formed
13 that intent to buy guns so that he could sell them to make a
14 profit.

15 It has nothing to do with the type of firearms, and this
16 chart is one of the best examples. December 17th is when the
17 government alleged dealing without a license in its
18 indictment. Those three firearms are pistols. They aren't,
19 oh, these huge, big weapons the government is trying to stir
20 your emotion with. No. In fact, this entire chart throughout
21 the time includes different types of weapons. It includes
22 pistols. It includes AK-47 style rifles. It does include
23 some very high-caliber weapons and high-dollar weapons as
24 well. But really what is important, it's not the type of
25 weapons, it's not even the amount that the weapons cost; it is

1 the intent when making the repetitive purchases of these
2 weapons, especially the same type of weapons over and over.
3 So that's what's important, ladies and gentlemen.

4 We're not asking you to convict the defendant on emotion,
5 in fact, quite the opposite. We would like you to find him
6 guilty based on the hard facts in this case, and the guns that
7 you saw were the hard facts. Those were the guns that he
8 bought. Those were the guns that we brought in because those
9 were the guns that were intercepted. Everything else he had
10 gotten rid of already. Everything else he had sold already,
11 very quickly after he purchased it.

12 And the government certainly has proven that and
13 especially when you look at the dates within the indictment
14 range. Starting at December, mid-December of 2018, we're only
15 talking about three and a half months until ATF encountered
16 him. In those three and a half months, he didn't have any of
17 those guns anymore. So maybe even if he held on to the guns
18 from earlier in 2018 for a little more time, certainly we're
19 talking about within a matter of months not having any of the
20 firearms that are listed anywhere in this chart, but
21 specifically in the more recent months, so it shows you how
22 quickly he was turning around and selling those weapons.

23 But, ladies and gentlemen of the jury, the reason that
24 you saw the guns in this case is because that's what he was
25 buying. We didn't choose those guns. He did. He sought

1 those guns out. He purchased those guns. He paid money for
2 those guns because he knew he was going to make a profit on
3 them. In fact, that one seizure, that one seizure on April
4 4th from an order that was placed just a few days earlier was
5 worth -- he spent \$34,000 on that, more than he had made in
6 the entire previous year. According to his 2018 tax return,
7 he claimed making \$31,000 that year. He spent more than he
8 had made in the entire year that had just ended a few months
9 prior on those guns. And nowhere in his bank account, as of
10 March of -- in fact, even in April of 2019 was there more than
11 just a \$2,500, a \$2,599 check that he had gotten from PHCC for
12 non-firearm-related income.

13 It has nothing to do about the type of guns or that the
14 government doesn't like a certain type of gun. It has to do
15 with dealing in those guns without a license. And that has
16 nothing to do with the type of weapons they are, the caliber,
17 the make, the model. It has to do with the defendant's intent
18 in making those repetitive purchases and sales.

19 So, you know, the defense argues that, oh, the defendant
20 just thought guns were cool. Well, if he thought they were so
21 cool, why is he turning around and selling them so quickly?
22 Again, he may think guns are cool, he may think that all the
23 guns in this chart are cool, and there's nothing wrong with
24 that, but he never intended to keep them. He never intended
25 to keep them because they were cool. He intended to sell them

1 because they were cool and other people thought they were cool
2 and other people were willing to spend more money to buy them
3 than he could get them for, therefore the ability to make a
4 profit. And he didn't keep them. That's one thing, ladies
5 and gentlemen, that is undisputed. Except for the two pistols
6 worth about \$400 together, he didn't keep these \$111,000 worth
7 of firearms that he was buying. Even just looking at the date
8 range in the indictment, we're talking about I think upwards
9 of over \$60,000 worth of purchases, and he didn't keep any of
10 those, didn't have any of them just a few months later.

11 We see the tax returns. They're in your -- in the
12 admitted exhibits. You can take a look at them. You can see
13 what the defendant reported making in 2016, '17, and '18. The
14 defense makes a whole lot about Agent Cunningham not getting
15 those documents until September of 2019. Remember one thing.
16 Agent Cunningham actually did check the defendant's tax
17 records. She checked his tax records before she even had
18 contact with him on April 4th. He hadn't filed a thing in his
19 life. He had never filed taxes until a month after ATF comes
20 and speaks with him. Oh, that's interesting. Hmm, doesn't
21 look too good that I never reported any income, but I'm
22 spending \$34,000 in a day. So a month -- on May 6th, I
23 believe it was, and you can look at the returns. May 6th he
24 files back taxes for 2016, 2017, and 2018. But you put those
25 whole three years combined, in three years, 2016 to 2018, it

1 doesn't even approach the amount of money he spent on these
2 firearms.

3 And then it's interesting that he files 2019 tax returns
4 in the amount of claiming not \$200,000. He's filing married
5 now. I think about 33 was his wife's reported income. The
6 defendant says his gross receipts from his business were 166,
7 for a 142 adjusted gross income. Interestingly enough, 2016,
8 2017, 2018, he deducts significant business expenses. He
9 doesn't deduct a penny from his 2019 expenses. It doesn't
10 make a whole lot of sense. It is interesting that he files
11 these tax returns while he's under indictment in this case and
12 has a reason to exaggerate his income, so he can try to show
13 that he had a means to buy all these firearms and didn't
14 intend to sell them.

15 Well, first of all, it doesn't matter if he had a means
16 to buy the firearms. What matters is what he intended to do
17 with them. He could have made -- the defendant could be a
18 billionaire and have more than enough money to spend on these
19 firearms, but if he bought them with the intent to sell them,
20 no matter how much money he had, it was what his intention was
21 to do with those firearms. It doesn't have to be a percentage
22 of his income. It doesn't -- it's not even necessary that we
23 show that he actually profit. Even if someone was really bad
24 at dealing in firearms, actually making a profit, actually
25 making a sale, as the Judge will instruct you, isn't required.

1 But what was his intent? And I submit to you that all the
2 evidence shows his intent was to make a profit. He realizes
3 how much money he can make off of these, and he realizes that
4 if he keeps buying these guns and keeps selling them he can
5 make more and more money, and that is the money that's going
6 into his bank account.

7 It's also very interesting to note that he has not paid
8 his 2019 taxes. He owes about \$22,000. As you heard the
9 stipulation, that money is still, as of this date, still owed
10 now along with penalties and interest. If he had \$34,000 just
11 of his own money lying around to spend on guns in one day, why
12 doesn't he have 22 grand to pay taxes? Why is he incurring
13 all those penalties on his taxes if he easily has that money
14 to throw around on guns? He only had that money to spend on
15 guns because he knew he would recoup it. He knew he would not
16 only recoup it but recoup more because he could sell them for
17 a profit.

18 I do want to talk to you about the statements, about the
19 discussion about guns the defendant bought in the last two
20 weeks. And the defense tries to blame this and say it's just
21 confusion that was caused by the agents. I submit to you it
22 wasn't. You heard the recording. You can listen to the
23 recording again. But the defendant never answered the
24 question, because they spent a painful amount of time trying
25 to get him to answer how many guns he bought in the last two

1 weeks and he never did. Then they broke it down and said,
2 okay, let's take baby steps. Let's just talk about the last
3 four days then, because he wouldn't answer the last two weeks.

4 And you have the transcript to look at in front of you.
5 It went on for a page in that transcript, a discussion about
6 the last two weeks. Special Agent Bort starts with, "The
7 other guns, and how about the other guns you purchased
8 recently?" "The defendant: Ah, you've got to be more
9 specific, man." Then Agent Bort asked him, "In the last two
10 weeks, have you purchased other firearms?" The defendant's
11 answer: "No." He says no. Why would you say no if there
12 wasn't anything wrong with those purchases? Why would you say
13 no if you didn't intend to sell them? That purchase, those
14 purchases would have been completely legal if he didn't intend
15 to sell them. There is no other law he is charged with
16 violating, but he says no. Even though he had just purchased
17 them two days, two days earlier, he says no.

18 And they go on. In fact, Agent Bort asks him again about
19 the firearm he purchases. The defendant, instead of
20 answering, then starts to be evasive. "In the last two
21 weeks?" "Uh-huh." "Man, I've got to check my time schedule."
22 And they go on and on for some exchange. "Okay. We know you
23 purchased additional firearms in the last couple weeks. Do
24 you know what they are?" "Hmm. Well, are you asking me if I
25 purchased or what kind?" They go back and forth. The

1 defendant: "Uh, I don't know. The last two weeks?" Again,
2 "Um, the last two weeks?" He goes on and on for a page of the
3 transcription and doesn't answer the question.

4 So finally, finally, after several minutes, Agent
5 Cunningham says, "Okay. Let's break it down. Let's make it a
6 little easier for you. Let's talk about just -- let's just go
7 back four days." Well, again you go back four days, we know
8 that he purchased guns April 2nd, and he still starts being
9 evasive, although they eventually get him to talk about some
10 of the guns. But that initial answer of no is what's really
11 important. Immediately, last two weeks? No. There are 16 of
12 them, two within the last two days, and his initial response
13 is no. Then finally he admits to having bought some guns when
14 confronted with the fact that the agents know about them,
15 says, "I got rid of them." And they ask specifically, "How
16 did you get rid of them?" And he said he sold them. And we
17 hear other statements going on about the profits he made when
18 he sold them.

19 The defendant wasn't confused. There's no high pressure.
20 You heard the interview. These were not -- the defendant
21 wasn't under arrest at the time. He wasn't threatened with
22 anything. And in fact you hear about -- you can hear the
23 tenor and the demeanor of the conversation.

24 The defense tries to say, oh, well, he knew he was going
25 to get arrested because Roman was acting squirrely. Well, we

1 heard Roman. He was like, "No, I wasn't worried about
2 anything. I had no reason to be concerned." I mean, and he
3 didn't. But even if Roman was acting squirrely, even if the
4 defendant noticed something seemed a little different, just
5 because someone else seems a little bit odd, you get worried
6 about being arrested? Again, because he knew what he was
7 doing was wrong. There was nothing illegal about the big
8 order. What was illegal is what he intended to do with that
9 order.

10 But the defense makes more of, well, if he really thought
11 he was violating the law, if he really was intending to sell
12 them, he wouldn't have still showed up. Oh, yes, he would
13 have, ladies and gentlemen. Remember, he bought those guns
14 online. He had already paid for them. So if he doesn't show
15 up, not only can he not make his profits off these guns, and
16 he knows each one of these guns is worth about 2 grand in
17 profits, but he's also out 34 grand he already spent. So of
18 course he's going to show up. His whole reason for doing this
19 is making money. He's not going to just not show up and
20 forgo, first of all, the income he could have gotten for that,
21 the profits he could have made, but of the money he's already
22 spent. So of course he's going to show up, but he was
23 worried.

24 So he comes up armed with a story, talks about, "Oh,
25 yeah, well, one of those guns, I had to get rid of it because

1 it jammed because, you know, that recall." And then he talks
2 about, "Oh, yeah, I bought these guns to go shooting. I
3 bought the Barretts because I like shooting .50 cal's. I go to
4 the TRC every chance I get, the Tucson Rifle Club every chance
5 I get. I've been there six times, been on the .50, you know,
6 shot .50 cal's there." We know all that's not true. But again
7 he knows that he's done something wrong, he knows exactly what
8 it is, and so he tries to explain why he didn't have those
9 guns anymore.

10 Ladies and gentlemen, it is the government's burden, it's
11 the government's burden to prove this case beyond a reasonable
12 doubt, not the defendant's but the government's. Again,
13 though, it's important to remember what a reasonable doubt is,
14 again not beyond any doubt, not beyond any possible doubt, but
15 the doubt has to be reasonable.

16 So consider the arguments that the defense makes,
17 consider what they want you to believe, and ask yourself, is
18 that explanation reasonable? Does that make sense to me? In
19 light of everything, I submit to you the only reasonable
20 interpretation of all this evidence and the only reasonable
21 application of the law, as the Judge is about to instruct you,
22 is that the defendant did engage in the business of dealing
23 firearms without a license.

24 We hear a lot about, and I could spend the rest of the
25 day trying to talk to you about every argument that the

1 defense makes. You heard about how, for instance, "or best
2 offer" can be a higher offer than some things listed and
3 oftentimes on Armslist that happens. People get into bidding
4 wars. And that's what happened when the defendant posted that
5 Barrett for sale on February 20th. He himself said the offers
6 kept getting higher and higher and higher and he made 20 grand
7 off of it, and that's reflected in his bank accounts, and he
8 knows that. Again, even if that first Barrett, he didn't
9 realize how much money he could make, certainly when he bought
10 the next five within just a few weeks, he knew that he could.
11 And lo and behold, two of them were seized, but the other
12 three had already sold just like the first one, and his
13 deposits in his bank account reflect that.

14 Ladies and gentlemen, it's important to remember none of
15 the witnesses are on trial. The agents aren't on trial. The
16 attorneys aren't on trial. So why does the defense spend so
17 much time trying to disparage what the witnesses said or
18 pick apart little parts in their statement when they're the
19 ones that aren't on trial? Because the defendant is on trial
20 and all of the evidence in this case points to only one
21 reasonable conclusion, and that reasonable conclusion is,
22 beyond a reasonable doubt, when we apply our common sense and
23 our sense of reason, that the defendant is guilty. He didn't
24 have a license to deal firearms and he engaged in the
25 business. He made several repetitive purchases of firearms

1 over a period of time, devoting his time and attention with
2 the intent to make a profit.

3 Ladies and gentlemen, you've paid very careful attention
4 to the evidence in this case, and I appreciate that. I saw
5 you taking notes. I saw you paying very careful attention to
6 the testimony and the exhibits. I would just ask that you
7 consider not the arguments, not what either party says they
8 want you to believe, but what you truly believe, what you
9 think is reasonable in this case when you look at all the
10 evidence, not a little bit here and there.

11 You know, this isn't about candy stores or shoes or cars
12 or Gregorian calendars. It's about deadly weapons, about
13 firearms and an industry that is highly regulated because it
14 does involve the business of dealing in deadly weapons. And
15 the defendant had the option to go about his firearm dealing
16 conduct legally but chose not to do that, wanted to make a
17 profit, wanted to be able to make as much money as he could
18 selling firearms online, and he did that and he knew that what
19 he was doing was wrong. He knew he was going to get arrested.
20 "I know I'm going to get arrested tomorrow." He knew exactly
21 what was going on.

22 Ladies and gentlemen, I submit to you that when you look
23 at the elements of this case, elements of the charge, when you
24 look at the evidence in the case and when you consider what
25 makes sense to you, that the only conclusion beyond a

1 reasonable doubt is that the defendant is guilty, and we ask
2 that you find him guilty. Thank you.

3 THE COURT: All right. Thank you, Ms. Woolridge.

4 Ms. Coronado, I'll ask if you'll pass out the
5 instructions.

6 All right. At this time, I'm going to give you your
7 final jury instructions. Ms. Coronado has given you a copy of
8 the instructions. You may follow along as I read if you want
9 to do so.

10 Members of the jury, now that you have heard all the
11 evidence, it is my duty to instruct you on the law
12 that applies to this case. A copy of these instructions will
13 be available in the jury room for you to consult.

14 It is your duty to weigh and to evaluate all the evidence
15 received in the case and, in that process, to decide the
16 facts. It is also your duty to apply the law as I give it to
17 you to the facts as you find them, whether you agree with the
18 law or not. You must decide the case solely on the evidence
19 and the law and must not be influenced by any personal likes
20 or dislikes, opinions, prejudices, or sympathy. You will
21 recall that you took an oath promising to do so at the
22 beginning of the case.

23 You must follow all these instructions and not single out
24 some and ignore others. They are all important. Please do
25 not read into these instructions or into anything I may have

1 said or done any suggestion as to what verdict you should
2 return. That is a matter entirely up to you.

3 The indictment is not evidence. The defendant has
4 pleaded not guilty to the charge. The defendant is presumed
5 to be innocent unless and until the government proves the
6 defendant guilty beyond a reasonable doubt. In addition, the
7 defendant does not have to testify or present any evidence to
8 prove innocence. The government has the burden of proving
9 every element of the charge beyond a reasonable doubt.

10 A defendant in a criminal case has a constitutional right
11 not to testify. You may not draw any inference of any kind
12 from the fact that the defendant did not testify.

13 Proof beyond a reasonable doubt is proof that leaves you
14 firmly convinced the defendant is guilty. It is not required
15 that the government prove guilt beyond all possible doubt.

16 A reasonable doubt is a doubt based upon reason and
17 common sense and is not based purely on speculation. It
18 may arise from a careful and impartial consideration of all
19 the evidence or from lack of evidence.

20 If after a careful and impartial consideration of all the
21 evidence you are not convinced beyond a reasonable doubt that
22 the defendant is guilty, it is your duty to find the defendant
23 not guilty. On the other hand, if after a careful and
24 impartial consideration of all the evidence you are convinced
25 beyond a reasonable doubt that the defendant is guilty, it is

1 your duty to find the defendant guilty.

2 The evidence you are to consider in deciding what the
3 facts are consists of the sworn testimony of any witness, the
4 exhibits received in evidence, and any facts to which the
5 parties have agreed.

6 In reaching your verdict, you may consider only the
7 testimony and exhibits received in evidence. The following
8 things are not evidence and you may not consider them in
9 deciding what the facts are:

10 Questions, statements, objections, and arguments by the
11 lawyers are not evidence. The lawyers are not witnesses.
12 Although you must consider a lawyer's questions to understand
13 the answers of a witness, the lawyer's questions are not
14 evidence. Similarly, what the lawyers have said in their
15 opening statements, have said in their closing arguments and
16 at other times is intended to help you interpret the evidence,
17 but it is not evidence. If the facts as you remember them
18 differ from the way the lawyers state them, your memory of
19 them controls.

20 Any testimony that I have excluded, stricken, or
21 instructed you to disregard is not evidence.

22 This next sentence about evidence being received for a
23 limited purpose doesn't apply here. I don't believe that we
24 did admit any evidence for a limited purpose.

25 Counsel, do you agree?

1 MS. WOOLRIDGE: Yes, Your Honor.

2 MR. ROACH: Yes, Your Honor.

3 THE COURT: All right. So that instruction in
4 brackets you can disregard. There was no evidence that was
5 received only for a limited purpose.

6 Anything you may have seen or heard when the court was
7 not in session is not evidence. You are to decide the case
8 solely on the evidence received at the trial.

9 Evidence may be direct or circumstantial. Direct
10 evidence is direct proof of a fact, such as testimony by a
11 witness about what that witness personally saw or heard or
12 did. Circumstantial evidence is indirect evidence; that is,
13 it is proof of one or more facts from which you can find
14 another fact.

15 You are to consider both direct and circumstantial
16 evidence. Either can be used to prove any fact. The law
17 makes no distinction between the weight to be given to either
18 direct or circumstantial evidence. It is for you to decide
19 how much weight to give to any evidence.

20 In deciding the facts in this case, you may have to
21 decide which testimony to believe and which testimony not to
22 believe. You may believe everything a witness says or part of
23 it or none of it.

24 In considering the testimony of any witness, you may take
25 into account the witness's opportunity and ability to see or

1 hear or know the things testified to; the witness's memory;
2 the witness's manner while testifying; the witness's interest
3 in the outcome of the case, if any; the witness's bias or
4 prejudice, if any; whether other evidence contradicted the
5 witness's testimony; the reasonableness of the witness's
6 testimony in light of all the evidence; and any other factors
7 that bear on believability.

8 The weight of the evidence as to a fact does not
9 necessarily depend on the number of witnesses who testify.
10 What is important is how believable the witnesses were and how
11 much weight you think their testimony deserves.

12 You are here only to determine whether the defendant is
13 guilty or not guilty of the charge in the indictment. The
14 defendant is not on trial for any conduct or offense not
15 charged in the indictment.

16 The defendant is charged in Count One of the indictment
17 with engaging in the business of dealing firearms without a
18 license in violation of Section 922(a)(1)(A) of Title 18 of
19 the United States Code. In order for the defendant to be
20 found guilty of this charge, the government must prove each of
21 the following elements beyond a reasonable doubt:

22 First, the defendant was willfully engaged in the
23 business of dealing in firearms from on or about December
24 17th, 2018 to on or about April 4th, 2019; and, second, the
25 defendant did not then have a license as a firearms dealer.

1 The government must prove beyond a reasonable doubt that
2 the defendant engaged in a greater degree of activity than the
3 occasional sale of a hobbyist or collector and that the
4 defendant devoted time, attention, and labor to selling
5 firearms as a trade or business with the intent of making
6 profits through the repeated purchase and sale of firearms.
7 For a person to engage in the business of dealing in firearms,
8 it is not necessary to prove an actual sale of firearms
9 occurred.

10 "Willfully" requires proof that the defendant knew that
11 his or her conduct was unlawful but does not require proof
12 that the defendant knew of the federal licensing requirement.

13 The indictment charges that the offense alleged was
14 committed on or about certain dates.

15 Although it is necessary for the government to prove
16 beyond a reasonable doubt that the offense was committed on
17 dates reasonably near the dates alleged in the indictment, it
18 is not necessary for the government to prove that the offense
19 was committed precisely on the dates charged.

20 The law does not require a private seller of firearms to
21 produce documentation of sales.

22 You have heard testimony that the defendant made a
23 statement. It is for you to decide, one, whether the
24 defendant made the statement and, two, if so, how much weight
25 to give to it. In making those decisions, you should consider

1 all the evidence about the statement, including the
2 circumstances under which the defendant may have made it.

3 When you begin your deliberations, elect one member of
4 the jury as your foreperson who will preside over the
5 deliberations and speak for you here in court.

6 You will then discuss the case with your fellow jurors to
7 reach agreement if you can do so. Your verdict, whether
8 guilty or not guilty, must be unanimous.

9 Each of you must decide the case for yourself, but you
10 should do so only after you have considered all the evidence,
11 discussed it fully with the other jurors, and listened to the
12 views of your fellow jurors.

13 Do not be afraid to change your opinion if the discussion
14 persuades you that you should, but do not come to a decision
15 simply because other jurors think it is right.

16 It is important that you attempt to reach a unanimous
17 verdict but, of course, only if each of you can do so after
18 having made your own conscientious decision. Do not change an
19 honest belief about the weight and effect of the evidence
20 simply to reach a verdict.

21 Because you must base your verdict only on the evidence
22 received in the case and on these instructions, I remind you
23 that you must not be exposed to any other information about
24 the case or to the issues it involves. Except for discussing
25 the case with your fellow jurors during your deliberations:

1 Do not communicate with anyone in any way and do not let
2 anyone else communicate with you in any way about the merits
3 of the case or anything to do with it. This includes
4 discussing the case in person, in writing, by phone or
5 electronic means, via email, text messaging, or any Internet
6 chat room, blog, website, or other feature. This applies to
7 communicating with your family members, your employer, the
8 media or press, and the people involved in the trial. If you
9 are asked or approached in any way about your jury service or
10 anything about this case, you must respond that you have been
11 ordered not to discuss the matter and to report the contact to
12 the Court.

13 Do not read, watch, or listen to any news or media
14 accounts or commentary about the case or anything to do with
15 it; do not do any research, such as consulting dictionaries,
16 searching the Internet, or using other reference materials;
17 and do not make any investigation or in any other way try to
18 learn about the case on your own.

19 The law requires these restrictions to ensure the parties
20 have a fair trial based on the same evidence that each party
21 has had an opportunity to address. A juror who violates these
22 restrictions jeopardizes the fairness of these proceedings,
23 and a mistrial could result that would require the entire
24 trial process to start over. If any juror is exposed to any
25 outside information, please notify the Court immediately.

1 Some of you have taken notes during the trial. Whether
2 or not you took notes, you should rely on your own memory of
3 what was said. Notes are only to assist your memory. You
4 should not be overly influenced by your notes -- excuse me --
5 or those of your fellow jurors.

6 The punishment provided by law for this crime is for the
7 Court to decide. You may not consider punishment in deciding
8 whether the government has proved its case against the
9 defendant beyond a reasonable doubt.

10 A verdict form has been prepared for you. After you have
11 reached unanimous agreement on a verdict, your foreperson
12 should complete the verdict form according to your
13 deliberations, sign and date it, and advise the clerk that you
14 are ready to return to the courtroom.

15 If it becomes necessary during your deliberations to
16 communicate with me, you may send a note through the clerk,
17 signed by any one or more of you. No member of the jury
18 should ever attempt to communicate with me except by a signed
19 writing, and I will respond to the jury concerning the case
20 only in writing or here in open court.

21 If you send out a question, I will consult with the
22 lawyers before answering it, which may take some time. You
23 may continue with your deliberations while waiting for the
24 answer to any question. Remember that you are not to tell
25 anyone, including me, how the jury stands, numerically or

1 otherwise, on any question submitted to you, including the
2 question of the guilt of the defendant, until after you have
3 reached a unanimous verdict or have been discharged.

4 The last page that is attached to the instructions is a
5 copy of the verdict form that the foreperson would complete if
6 the jury is able to reach a verdict. You'll see that it's
7 straightforward. It has Count One, the only charge before the
8 jury, that reads: We, the jury, find the defendant, Isaias
9 Delgado, not guilty or guilty (circle one) of engaging in the
10 business of dealing firearms without a license, as charged in
11 Count One of the indictment.

12 So if the jury is able to reach a verdict, the foreperson
13 would circle the word that indicates the verdict, either "not
14 guilty" or "guilty," sign the form, and date it.

15 Counsel, any corrections or additions?

16 MS. WOOLRIDGE: No, Your Honor. Thank you.

17 MR. ROACH: No, Your Honor.

18 THE COURT: When you go to the jury room to
19 deliberate, you will have the following items with you: the
20 individual set of jury instructions that was just read to you;
21 a verdict form; any notes that you took during the trial; and
22 those exhibits which were admitted into evidence, with two
23 exceptions. We won't be providing the guns to the jury. If
24 you want to view those guns, you need to let Ms. Coronado
25 know. We'll make arrangements for you to do so, and we'll

1 bring them into the courtroom and have you come into the
2 courtroom to see those.

3 The other exception is the video that's Exhibit 200.
4 That also can be played for you. We'll make arrangements if
5 you want to see it. That's the video at the shooting range.
6 Because of the equipment issues and because of the translation
7 issue, we'll have an agent or court personnel show you that
8 video if you let us know that that's a video that you want to
9 see.

10 If there is somebody present in the courtroom or wherever
11 you're viewing this, which there will be for either one of
12 those exhibits, the guns or that particular video, please
13 don't discuss the case or make any comments about the evidence
14 until those individuals have left and you're back among only
15 the jurors.

16 Now we can only have 12 jurors who deliberate and, Juror
17 No. 35, you are the alternate. So the admonition
18 still applies to you to not talk about the case or do any
19 independent investigation or to reach any conclusions. You
20 could be called back to serve on this jury. If the jury
21 reaches a verdict, then we will let you know and the
22 admonition will be lifted.

23 I might not have another opportunity to speak with you,
24 so I want to personally thank you for being here and
25 participating in this trial so that we could do what we need

1 to do here in court. When you are excused, I'm going to ask
2 if you'll provide a cell phone number to Ms. Coronado so that
3 we can reach you if we need to call you back to service or to
4 let you know that the admonition's been lifted and that a
5 verdict was reached. But thank you very much for being here.

6 JUROR: I live in Safford, about two hours away.
7 Does that mean I can go home, or do I need to hang out around
8 here?

9 THE COURT: So you can go home. I will ask you to
10 keep your phone nearby because we will let you know if and
11 when the jury reaches a verdict, but we won't expect you to
12 wait here while the jury is deliberating. If you are called
13 back, we will ask you to drive back, and we appreciate the
14 burden that that imposes on you.

15 All right. So at this time, I'll excuse the jurors for
16 their deliberations. I understand you've agreed to use the
17 larger jury deliberation room on the side here, and Ms.
18 Coronado will take you there and also give you forms so that
19 you can order lunch that will be prepared and delivered to
20 you.

21 Thank you all for your time and attention.

22 (Jury out, 12:17 p.m.)

23 THE COURT: All right. Counsel, if you'll please be
24 sure and make sure that Ms. Coronado has numbers that she can
25 reach you at in case the jurors have a question or we need to

1 call you back to court. I'm going to ask that you not be more
2 than five minutes away from the courthouse in case there are
3 questions. And then also if you'll check with Ms. Coronado to
4 make sure that she has all the exhibits to give to the jurors.

5 Mr. Roach, was there an issue?

6 MR. ROACH: Judge, did you say five? Just because my
7 office is by superior court, which is probably more than that.
8 I can stay here if that's --

9 THE COURT: Well, tell me how much time it would take
10 you to get to court if you were called.

11 MR. ROACH: I'll park right in front of my office,
12 and I could have somebody drop me off, so we're talking eight,
13 ten.

14 THE COURT: I think that's fine.

15 MR. ROACH: Okay.

16 THE COURT: All right. Thank you. Thank you for
17 clarifying that. We once did wait 45 minutes for an attorney.

18 All right. Thank you all for your presentations, and
19 we'll stand at recess right now.

20 (Court recessed from 12:18 p.m. to 2:57 p.m.)

21 THE CLERK: In criminal matter 19-1094, United States
22 of America versus Isaias Delgado, on for jury trial, day four.

23 Counsel, please state your appearances.

24 MS. WOOLRIDGE: Good afternoon, Your Honor. Angela
25 Woolridge appearing on behalf of the United States.

1 THE COURT: Good afternoon.

2 MR. ROACH: Good afternoon, Your Honor. Brad Roach
3 and Trevor Hill on behalf of Mr. Delgado, who is present.

4 THE COURT: Good afternoon.

5 And good afternoon to the jury.

6 I see, Juror No. 5, that you are holding a folder. Are
7 you the foreperson?

8 FOREPERSON: Yes, ma'am.

9 THE COURT: Juror No. 5, has the jury reached a
10 verdict?

11 FOREPERSON: We have.

12 THE COURT: All right. I'm going to ask if you'll
13 please give the verdict to Ms. Coronado.

14 All right. And I'll ask Ms. Coronado to publish the
15 verdict.

16 THE CLERK: As to Count One: We, the jury, find the
17 defendant, Isaias Delgado, guilty of engaging in the business
18 of dealing firearms without a license, as charged in Count One
19 of the indictment.

20 Ladies and gentlemen of the jury, is this the verdict and
21 the verdict of each of you?

22 (Members of the jury answer in the affirmative.)

23 THE CLERK: Thank you.

24 THE COURT: Does either party want the jury polled?

25 MS. WOOLRIDGE: No, thank you, Your Honor.

1 MR. ROACH: Yes, please.

2 THE COURT: All right. So Ms. Coronado just read the
3 verdict form that indicated that the jury found the defendant
4 guilty of the sole count in the indictment, the dealing in
5 firearms. I'm going to ask each of you if the verdict as read
6 by Ms. Coronado was your verdict and the verdict of each of
7 the other jurors.

8 Juror No. 3.

9 JUROR: Yes.

10 THE COURT: Juror No. 4.

11 JUROR: Yes.

12 THE COURT: Juror No. 5.

13 JUROR: Yes.

14 THE COURT: Juror No. 6.

15 JUROR: Yes.

16 THE COURT: Juror No. 7.

17 JUROR: Yes.

18 THE COURT: Juror No. 8.

19 JUROR: Yes.

20 THE COURT: Juror No. 9.

21 JUROR: Yes.

22 THE COURT: Juror No. 17.

23 JUROR: Yes.

24 THE COURT: Juror No. 18.

25 JUROR: Yes.

1 THE COURT: Juror No. 19.

2 JUROR: Yes.

3 THE COURT: Juror No. 20.

4 JUROR: Yes.

5 THE COURT: And Juror No. 26.

6 JUROR: Yes.

7 THE COURT: Thank you.

8 I want to thank all the jurors for your time and
9 attention during the trial. The admonition is now lifted.
10 You're free to talk about the case or not talk about the case
11 as you desire.

12 I'm going to excuse you at this time, and I'm going to
13 ask if Ms. Coronado will take you back to the jury room. I'm
14 going to ask if you'll wait there for a minute, and then I'm
15 going to come back and have some final conversation with you.

16 Thank you.

17 (Jury excused, 3:00 p.m.)

18 THE COURT: So, counsel, there remains the issue of
19 the forfeiture allegations. How do you want to proceed as far
20 as those allegations?

21 MS. WOOLRIDGE: Your Honor, the parties agreed to
22 submit that for the Court for its determination. If the Court
23 requires any or if the Court feels that it would be helpful to
24 have any sort of briefing to assist it, we're glad to provide
25 it; but at least from the government's perspective, the issue

1 is straightforward. We did file a bill of particulars
2 alleging the particular firearms that we believe are subject
3 to forfeiture and would ask that the Court find that the
4 government has shown that these items were involved in the
5 offense and therefore subject to forfeiture. I don't know the
6 defense position, but if I understand correctly, our agreement
7 was to submit that to the Court for its determination.

8 THE COURT: And I believe we did already execute a
9 waiver of the right to jury trial, so what I'm specifically
10 asking is how the parties want to present the issue of the
11 forfeiture.

12 Mr. Roach.

13 MR. ROACH: Judge, I would submit it on the -- or I
14 have no evidence to add, no additional argument to make,
15 unless the Court would like some. So I believe -- I don't
16 know if the government has any additional evidence.

17 MS. WOOLRIDGE: And, Your Honor, I don't have any
18 additional evidence. Only I would be willing to submit any
19 briefing if the Court would require it or feel that it would
20 be of use, but as with the defense, I believe that it, as far
21 as the evidence, can be submitted on the evidence presented at
22 trial.

23 THE COURT: There are 12 different weapons that are
24 listed in the forfeiture allegation in the indictment. That's
25 what's at issue, correct?

1 MS. WOOLRIDGE: Your Honor, the government then filed
2 a bill of particulars alleging additional firearms.

3 THE COURT: I have the bill of particulars. It's
4 Document 85, and that one has 16 different weapons.

5 MS. WOOLRIDGE: That sounds right. I thought the
6 total was 28, Your Honor, but I did not want to misspeak from
7 memory that I wasn't sure of. But, yes, that is consistent
8 with my recollection.

9 THE COURT: And the basis for forfeiture that the
10 government is asserting is?

11 MS. WOOLRIDGE: Your Honor, the basis for forfeiture
12 is that the -- and I'm sorry. I don't know the statutory
13 authority off the top of my head. But the basis is that these
14 are firearms that were directly involved in the offense and
15 are the fruits of the crime and that therefore, under the
16 applicable Title 18 authority governing forfeiture, they are
17 subject, and I believe that's -- I'm sorry, I'm not going to
18 try to guess as to the statute, but we did cite it in our
19 forfeiture allegation -- that they are subject to forfeiture
20 under that theory and the basis that the government has proven
21 that all 28 of these firearms were in fact involved in and
22 fruits of the defendant's unlawful dealing in firearms without
23 a license, of which he has been convicted.

24 Additionally, because all but ten of those firearms were
25 put outside of the reach -- and I'm sorry, I'm actually now

1 thinking 12 of those firearms were outside of the reach of the
2 government, so the firearms that were not seized, that the
3 Court issue a substitute assets for the value of those
4 firearms. The government has presented evidence through
5 Exhibit 77 of the value of each of the firearms, but again if
6 the -- and would submit on those amounts, but if the Court
7 requires further documentation, we would be glad to provide
8 that as well.

9 THE COURT: All right. So I see where I can take the
10 bill of particulars, the 12 -- I'm sorry, the 16 items that
11 are listed there, and possibly tie them to your chart by
12 serial number to get the date of the purchase and the amount
13 of the purchase, using the purchase price column without tax
14 or other expenses. That's what you're asking me to do,
15 correct?

16 MS. WOOLRIDGE: Yes, Your Honor.

17 THE COURT: And you're asking me to determine that
18 these guns are basically property constituting the offense?

19 MS. WOOLRIDGE: Yes, Your Honor.

20 THE COURT: And, Mr. Roach, from the defense point of
21 view, the Court can consider the evidence that was presented
22 at the trial to determine whether or not the government has
23 met its burden, I believe by a preponderance of evidence, of
24 showing that each of these guns was one that was involved in
25 the offense of dealing without a license.

1 MR. ROACH: Yes, Judge. And I probably, I'm sorry, I
2 should have argued on behalf of my client. I think that there
3 is a reasonable argument to be made.

4 The government's argument in closing that my client's
5 purchase of Item No. 16 on Exhibit 77, the Barrett Model
6 M82A1, that there was evidence or the government alleged that
7 he sold for \$10,500, I think the Court and the jury could have
8 considered, as was argued by the government, that regardless
9 of what else had happened, that was the time when they argued
10 that my client realized he could make money doing this and
11 then bought the weapons after that.

12 So I would argue that just because there is a guilty
13 verdict doesn't mean the forfeiture has to apply to all of
14 them, and if the Court is considering by a preponderance of
15 the evidence which it does apply for, I think that argument,
16 one, is the most compelling about which ones the jury would
17 have found. That would have been Items 17 and on on Exhibit
18 77.

19 THE COURT: I think what would be most prudent to do
20 then is to set the forfeiture aspect for tomorrow morning, say
21 at 10:00 o'clock, and give each side 30 minutes to discuss the
22 specific firearms, the specific values, and what you believe
23 the Court's finding should be so that I can make a ruling as
24 to all of the specific weapons that are listed here because,
25 Mr. Roach, as you pointed out, there have been some various

1 arguments about whether or not they were part of the dealing
2 or not part of the dealing.

3 So, counsel, can you be here at 10:00 o'clock tomorrow
4 morning for that purpose?

5 MS. WOOLRIDGE: Yes, Your Honor.

6 MR. ROACH: Yes. Thank you.

7 THE COURT: And if you have proposed forms of order
8 that you want to bring, that would be helpful.

9 MS. WOOLRIDGE: Yes, Your Honor. And I should point
10 out for the Court, it's not something, of course, that needs
11 to be resolved until tomorrow, but I just wanted to let
12 defense counsel know he would not have to argue with regard to
13 Items 39 or 40. Those two firearms were seized and the
14 defendant had not yet paid for them, and so the government
15 will be returning them to the rightful owner, which is the
16 federal firearms licensee who still owns them, because the
17 defendant canceled the payment on them.

18 THE COURT: On the bill of particulars, which
19 numbers, 1 through 16, are the same as 29 and 30?

20 MS. WOOLRIDGE: I'm sorry. 39 and 40 on the chart,
21 they are the Alexander Arms -- I'm sorry, Anderson Arms lower
22 pistol receivers and .50 Beowulf caliber.

23 THE COURT: So what I'm going to ask you to do is
24 come with the bill of particulars tomorrow and tell me what's
25 at issue.

1 MS. WOOLRIDGE: Okay, Your Honor. We will.

2 THE COURT: Excellent.

3 I am going to order that a presentence report be
4 prepared.

5 Mr. Delgado, your sentencing is set for October 26th at 3
6 p.m.

7 You're released on conditions. You're required to
8 continue to comply with those conditions, okay?

9 THE DEFENDANT: Thank you, Your Honor.

10 MR. ROACH: Can I ask my client one quick question?

11 THE COURT: Yes.

12 (Attorney-client discussion off the record.)

13 MR. ROACH: Thank you, Judge.

14 THE COURT: All right. Have a good evening. We'll
15 see you tomorrow morning.

16 MS. WOOLRIDGE: Thank you, Your Honor.

17 THE DEFENDANT: Thank you, Your Honor.

18 MR. ROACH: Thank you, Judge.

19 MS. WOOLRIDGE: Have a nice evening.

20 (Court adjourned at 3:10 p.m.)

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C E R T I F I C A T E

I, Aaron H. LaDuke, do hereby certify that I reported the foregoing proceedings to the best of my skill and ability, and that the same was transcribed by me via computer-aided transcription, and that the foregoing pages of typewritten matter are a true, correct, and complete transcript of all the proceedings had, as set forth in the title page hereto.

Dated this 26th day of October, 2021.

s/Aaron H. LaDuke

Aaron H. LaDuke, RMR, CRR
Official Court Reporter